(2)

01 1420 MAR 14 2002

OFFICE OF THE CLERK

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

PETITIONERS,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

CHRISTINE O. GREGOIRE
Attorney General

William Berggren Collins
Sr. Assistant Attorney General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6245

Counsel for Petitioners

25988

APPENDIX TABLE OF CONTENTS

Guardianship Estate of Keffeler 1
145 Wash. 2d 1, 32 P.3d 267 (2001)

Order Denying Motion For Reconsideration 40

Mandate 42

Order on Remand.....43

Court's Findings Of Fact On Order Of Remand From Supreme Court 46

Plaintiff's Order Granting Plaintiff's Motion For Summary Judgment.....112

Memorandum Opinion.....122

Order Allowing Amendment Of Complaint 131

Order Granting Amendment Of Order Certifying Class Action 133

Order Certifying Case To Proceed As A Class Action, Defining The Class And Denying Defendants' Motion To Dismiss.....136

Order List: 534 U.S.....141

Order (recall and stay) 142

Letter From Ronald Carpenter to Counsel.....143
(stay motion denied)

42 U.S.C.....145

20 C.F.R.....205

Wash. Rev. Code 245

Wash. Admin. Code.....256

Supreme Court of Washington,
En Banc.

GUARDIANSHIP ESTATE OF Danny KEFFELER, by Wanda Pierce, Guardian, and other persons similarly situated, Respondents,

v.

STATE of Washington DEPARTMENT OF SOCIAL AND HEALTH SERVICES; Lyle Quasim, Director of the Department of Social and Health Services; and Michael R. Hobbs, Program Manager for the Department of Social and Health Services,

Appellants.

No. 67680-1.

Argued Nov. 8, 2000.
Decided Oct. 11, 2001.

SANDERS, J. The plaintiff class asks us to hold the Washington State Department of Social and Health Services (DSHS) violated that provision of the Social Security Act (the Act), 42 U.S.C. § 407(a) which forbids creditor access to Social Security benefits. Here DSHS acts as a representative payee under 42 U.S.C. § 405(j) for foster children and then applies the Social Security benefits to reimburse the state budget for payments made to foster parents for the basic needs of those children. We are also asked if DSHS's actions deprived the foster children of their property absent due process and abridged their right to equal protection of the laws. Lastly the plaintiff class asserts entitlement to an award of reasonable attorney fees.

We hold DSHS as a representative payee violates § 407(a) of the Act when it applies Social Security benefits to the current maintenance needs of foster children for whom it acts as representative payee. Given this disposition we find it unnecessary to consider the due process and equal protection claims. We remand for further proceedings, including further consideration of the reasonable attorney fee award.

ISSUES

1. Does DSHS violate § 407(a) of the Social Security Act when, as a representative payee under § 405(j) of the Act, it uses Social Security benefits to pay current maintenance costs of children in foster care?

2. Is the class entitled to an award of reasonable attorney fees?

FACTS

Foster care in Washington is provided by an amalgam of federal, state, and private funds, although the program is largely state-funded. In fiscal year 2000, for example, the total foster care budget was $37.4 million in state funds, plus approximately $12.9 million in federal funds. To be eligible for federal funding under the Social Security Act, a state must provide foster care services under a plan approved by the Secretary of Health and Human Services. 42 U.S.C. § 670.[1] RCW 74.13.031[2] authorizes

[1] The Act authorizes federal assistance for state foster care services:

> For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter [as such plan was in effect on June 1, 1995] and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

42 U.S.C. § 670.

[2] RCW 74.13.031 provides, in pertinent part:

> The department shall have the duty to provide child welfare services and shall:
>
> (1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.
>
> (2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285.

DSHS to provide foster care services to children in Washington.

Foster care is generally provided in Washington to children who have been abused or neglected or have become the responsibility of the state through our juvenile

justice laws, Title 13 RCW.[3] On behalf of these children, the state pays a schedule of monthly allotments to foster parents who in turn pay for the basic necessities such as food, shelter, and clothing for the children in their charge. As of September 1999, there were 10,578 foster children under DSHS's supervision. An additional 2,352 children were in the custody of tribal authorities or child care agencies for whom DSHS paid support. Five hundred sixty-seven additional children received support through DSHS's Division of Developmental Disabilities (DDD).

Although DSHS provides foster care for children who need it, it is Washington public policy to attempt to recover the costs of foster care from the parents of children in foster care who are primarily liable for the costs of that care:

> It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs.

RCW 74.20A.010 (support of dependent children act). *See also In re Welfare of Feldman*, 94 Wash.2d 244, 250, 615 P.2d 1290 (1980) ("It is true that parents bear the primary responsibility for the support of their children.").

In the context of foster care, DSHS implemented the Legislature's cost recovery policy by regulation:

---

[3] *See, e.g.*, RCW 13.34.210 (if a child has no parent with parental rights, court may commit child to DSHS's custody; DSHS in turn may seek adoption for child or place the child in foster care or other suitable placement).

> Parents of children in foster care paid by the department satisfy their legal obligation to support their children when there is a superior court order for support by paying the amounts specified in the order or in the absence of a superior court order, by paying the amount determined under RCW 74.20A.055 and regulations promulgated in chapter 388-11 WAC.

Former WAC 388-70-075(1) (1976), *repealed by* St. Reg. 01-08-047 (Apr. 30, 2001).

If parents of a foster child are unavailable or unwilling to reimburse DSHS for the costs of foster care, DSHS may reimburse itself using "moneys and other funds" that come into its possession while the child is in its custody. RCW 74.13.060 provides, in pertinent part:

> The secretary [of the Department] or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:
>
> (1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

DSHS implemented RCW 74.13.060 with the following regulation:

(1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received, except for resources held in trust for an American Indian child according to provisions in WAC 388-28-650.

(a) Income includes SSI [Supplemental Security Income], RSDI [retirement survivors disability insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income.

(b) Receipt of other income as described above shall not relieve the child's responsible parent(s) of the liability for payment of child support in accordance with WAC 388-70-075 through 388-70-084.

(2) Any person, agency, or court which receives any payments on behalf of a child in foster

care shall remit such payments to the office of support enforcement, in accordance with WAC 388-70-082.

(3) Resources in the control of a child in foster care shall be treated in accordance with WAC 388-28-400 through 388-28-455.

Former WAC 388-70-069 (1983), *repealed by* St. Reg. 01-08-047 (Apr. 30, 2001).

Where a child is eligible for Social Security benefits,[4] federal law provides a process by which a "representative payee" may be appointed to administer the funds on behalf of the child. Section 405(j)[5] of the Act authorizes the Social Security Administration (Administration or SSA) to appoint such a "representative payee" for the child beneficiary:

If the [Administration] determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization,

[4] Children are eligible to receive either Title II Social Security Administration (SSA) benefits (based on the death or disability of a parent), or Title XVI Supplemental Security Income (SSI) benefits (based on the child's own disability), or both.

[5] Section 405(j) authorizes the appointment of a representative payee to receive SSA benefits under Title II. The appointment of a representative payee to receive SSI benefits under Title XVI is also authorized. 42 U.S.C. § 1383(a)(2)(A)(ii).

> with respect to whom [certain] requirements ... have been met (hereinafter in this subsection referred to as the individual's "representative payee").

42 U.S.C. § 405(j)(1)(A); *see also* 20 C.F.R. § § 404.2001(b), 416.601(b). Generally, a representative payee is appointed whenever a beneficiary is under 18 years of age. The Administration has an order of preference for representative payees for such children, generally favoring the appointment of parents or relatives of the child; it will appoint an authorized agency only if no parent or guardian is available. The appointment of a state agency like DSHS is the last on that priority list.[6] 42 U.S.C. § § 405(j)(3)(B), 405(j)(2)(C)(iii)(III); 42 U.S.C. § 1383(a)(2)(B); 20 C.F.R. § § 404.2021, 416.621.

The Code of Federal Regulations explains the function of representative payees:

> A representative payee may be either a person or an organization selected by us [the Social Security Administration] to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

---

[6] The Act prohibits the appointment of a creditor as representative payee except, inter alia, where the creditor is a relative or legal guardian of the beneficiary, or the creditor is a licensed state facility. 42 U.S.C. § 405(j)(2)(C)(i)(III); 42 U.S.C. § 1383(a)(2)(B)(iii).

20 C.F.R. § 404.2001(a).

The appointment of a representative payee such as DSHS may be challenged. The Administration must notify the beneficiary or legal guardian of the appointment of a representative payee and must advise that the beneficiary has the right to a hearing before the Commissioner and judicial review to challenge any appointment. 42 U.S.C. § 405(j)(2)(E)(i), (ii); 42 U.S.C. § 1383(a)(2)(B)(xi), (xii).

Representative payees, including state agencies, must use Social Security benefits for the beneficiary, and in the beneficiary's best interest, under guidelines set forth in the Administration's regulations. 20 C.F.R. § § 404.2035(a), 416.635(a). The regulations specifically authorize representative payees to use benefits to defray the cost of the beneficiary's "current maintenance," including food, shelter, clothing, medical care, and personal items. The regulations state, in relevant part:

> We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

20 C.F.R. § § 404.2040(a)(1), 416.640(a). The regulations also specify that the cost of institutionalized care is an authorized expense. 20 C.F.R. § § 404.2040(b), 416.640(b).

When monthly SSA and/or SSI benefits exceed the amount needed for current maintenance, the representative payee is required to conserve and invest the remaining

benefits in trust for the benefit of the beneficiary. 20 C.F.R. § § 404.2045(a), (c), 416.645(a), (c). Large amounts of retroactive benefits must be placed in a separate, dedicated account and may be used only for certain, enumerated expenditures. 20 C.F.R. § 416.640(e).

If a representative payee misuses benefits, the representative payee may be removed by the Administration. 42 U.S.C. § 405(j)(1)(A); 42 U.S.C. § 1383(a)(2)(A)(iii). Moreover, a representative payee's misuse of the beneficiary's funds is a felony. 42 U.S.C. § 408(a)(5). Given the criminal penalty for misuse of funds, some courts have inferred a fiduciary relationship between beneficiary and representative payee, although the statute and implementing regulations do not say as much. *See, e.g., Garvey v. Worcester Housing Auth.*, 629 F.2d 691 (1st Cir.1980), *cert. denied*, 450 U.S. 925, 101 S.Ct. 1379, 67 L.Ed.2d 356 (1981); *Bradley v. Austin*, 841 F.2d 1288 (6th Cir.1988); *C.G.A. v. State*, 824 P.2d 1364 (Alaska 1992); *In re Estate of Merritt*, 272 Ill.App.3d 1017, 209 Ill.Dec. 502, 651 N.E.2d 680 (1995); *Rice v. Perales*, 156 Misc.2d 631, 594 N.Y.S.2d 962 (Sup.Ct.), *aff'd*, 193 A.D.2d 1135, 599 N.Y.S.2d 211 (1993).

In September 1999, of the thousands of foster children in the custody of DSHS pursuant to Title 13 and chapter 74.13 RCW, 1,480 foster care children were receiving Social Security benefits. Nine hundred twenty-three children were receiving SSI benefits, 469 were receiving SSA benefits, and 88 children were receiving both. DSHS acted as a representative payee for 1,411 children in foster care and in DDD.

Two units within DSHS perform the actual function of representative payee for the Social Security benefits of class members. The Children's Administration

(Children's) provides services to all foster children regardless of whether the children also receive Social Security benefits. These services include monitoring the child's needs, determining special needs, and developing an individual service plan for each child. The Trust Fund Unit accounts for Social Security benefits received by DSHS as representative payee.

When a child is placed in foster care, Children's identifies those children who may be eligible for Social Security benefits and makes an application on their behalf. If Children's believes a denial of benefits is erroneous, Children's will appeal for the child. In each case, DSHS also applies to the Administration to become the representative payee for the child (except for developmentally disabled children).

When DSHS receives Social Security benefits as representative payee for a foster child the funds are deposited in a Foster Care Trust Fund Account at the Office of the State Treasurer. Although the funds are in a single account, the Trust Fund Unit maintains an individual "subsidiary account" for each child for whom benefits are received.[7]

Children's is responsible for providing the current maintenance needed by a child in foster care. However,

---

[7] The only exception to this practice occurs when DSHS receives a lump sum payment of SSI benefits of over six times the monthly benefit amount. Since October 1996, these lump sum payments have been deposited by the Administration directly into a dedicated account at a local bank. These funds cannot be used for basic foster care expenses, and can be expended only for special needs, primarily related to a child's impairment. Prior to October 1996, these funds were used to reimburse Children's for past foster care expenses.

Children's does not normally purchase a child's food, shelter, clothing, and other items directly. Rather, such items are purchased and provided by the child's foster parent. Children's pays the foster parent a fixed amount based on a schedule. Where a special item or expenditure is needed, the Trust Fund Unit will issue a check to either the foster parent or directly to a store or service provider. Such expenditures are authorized by DSHS in its discretion as the representative payee.

The Trust Fund Unit typically uses a child's Social Security benefits to pay for a child's basic foster care expenses. Every month, Children's generates a report showing the amount of money paid by Children's to a care provider for each child in foster care. The Trust Fund Unit uses this report to determine how much of a child's SSI and SSA funds it will direct the state treasurer to pay to Children's. In general, if the amount in the trust fund account is adequate to reimburse the entire cost of foster care, as claimed by Children's, the entire claimed amount is paid. If the funds in the trust fund account are not adequate to reimburse the entire cost of foster care, the Trust Fund Unit uses up to the amount available in the trust fund account. The amount to be paid for foster care is transferred from the Foster Care Trust Fund Account to Children's.

As representative payee, DSHS has the discretion to expend a child's SSA or SSI funds on items other than current basic foster care expenses. Children's staff may request that a child's benefits be used for extra items or special needs, such as computers, educational expenses, summer camps, counseling, toys, clothing, athletic equipment and orthodontics. When in doubt, the Trust Fund Unit consults with the Administration to determine whether a particular expenditure is authorized.

Children in foster care for whom a person or entity other than DSHS serves as representative payee still receive state-supported foster care. Foster children who do not receive any Social Security benefits are eligible for state funding for extra items and special needs if funds are available in the state foster care budget.

DSHS is also authorized to conserve and invest Social Security benefits for foster children. Funds not used for basic foster care or special needs are deposited into a single interest-bearing account. The interest earned on this account is credited to the child's individual subsidiary account. These funds are ultimately forwarded to a successor representative payee or paid directly to the child upon emancipation.

There is a $2,000 resource limit on any child receiving SSI benefits (although funds deposited to the dedicated account are not subject to this limit). DSHS monitors each child's subsidiary account to ensure the balance remains below the limit. When a balance is approaching the resource limit, the Trust Fund Unit notifies Children's of the need to spend down the account balance. Children's determines what special needs might be met using the excess funds and requests disbursements from the Trust Fund Unit. DSHS uses reimbursements to Children's for current expenses as a means of not exceeding the $2,000 limit.[8]

---

[8] Prior to October 1996, some dedicated accounts as well as subsidiary accounts were spent down by reimbursing Children's for previous basic care expenditures. In addition, the practice of "account sweeping" sometimes results in DSHS's taking all of a child's Social Security funds and applying those funds to accumulated (past) reimbursable foster care expenses.

Federal law forbids creditor access to Social Security benefits. 42 U.S.C. § 407(a) provides:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Commonly referred to as an antialienation provision, this statute evinces Congress's intent to remove Social Security benefits from the reach of creditors employing legal process. *Dionne v. Bouley,* 757 F.2d 1344, 1355 (1st Cir.1985). The statute also prohibits the voluntary transfer or assignment of Social Security benefits by the beneficiary. *Gardner v. Ewing,* 88 F.Supp. 315 (S.D.Ohio), *aff'd,* 185 F.2d 781 (6th Cir.1950), *rev'd on other grounds,* 341 U.S. 321, 71 S.Ct. 684, 95 L.Ed. 968 (1951); *accord Hurd v. Ill. Bell Tel. Co.,* 136 F.Supp. 125 (N.D.Ill.1955), *aff'd,* 234 F.2d 942 (7th Cir.), *cert. denied,* 352 U.S. 918, 77 S.Ct. 216, 1 L.Ed.2d 124 (1956). As the United States Supreme Court noted in *Bennett v. Arkansas,* 485 U.S. 395, 397, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988), any state law contrary to § 407(a) runs afoul of the Supremacy Clause. *Accord Crawford v. Gould,* 56 F.3d 1162, 1165 (9th Cir.1995).

The present case arose from DSHS's treatment of class representative Danny Keffeler. Apparently, an overzealous Department employee sought to have Danny's grandmother and guardian removed as representative payee. DSHS now asserts this was the only time it has ever

tried to remove a private representative payee. After four years of litigation involving just Danny, his guardian filed a class action lawsuit in the Okanogan County Superior Court on Danny's behalf and on behalf of others "similarly situated." Clerk's Papers (CP) at 1-15. According to the amended complaint, DSHS has now abandoned its efforts to become the representative payee for Danny.

The trial court certified the class, and later amended the certification to include children receiving both SSA and SSI benefits. The class now consists of "All foster children within the State of Washington, past, present, and future in foster care that receive [either SSA or SSI benefits] for whom the State of Washington acts or has sought to act as 'representative payee.' " CP at 574.[9]

The gravamen of the class action is that DSHS's actions violate the antialienation provision of 42 U.S.C. § 407(a) where DSHS, as representative payee, uses a foster child's Social Security benefits to reimburse the state for the costs of foster care. The class also presents several constitutional causes of action. First, the class alleges DSHS has acted irrationally, invidiously, and arbitrarily and capriciously in violation of 42 U.S.C. § 1983. Second, the class alleges DSHS's actions violate the due process clauses of the Washington Constitution and the Fourteenth Amendment. Third, the class alleges the state discriminates against the class members "by subjecting them to a lower

---

[9] The actual number of class members cannot be determined from records available to DSHS. Based on available records there are 7,798 class members dating back to July of 1991. According to the trial court, "the claims of the class extend back 18 years plus one year for a total of 19 years back from the filing of the plaintiffs' action, i.e. to 1979." Court's Findings of Fact on Order of Remand from Supreme Court at 18.

standard of living than children who are not so situated." Finally, the class alleges the state "maliciously, recklessly and wantonly is invading federally protected funds for its own improper advantage, to the detriment of Plaintiff and all other foster children's financial and emotional well-being." CP at 13-14.

In its prayer for relief, the class seeks (i) a permanent injunction enjoining DSHS from using Social Security payments to offset the cost of foster care; (ii) reimbursement to class members of all Social Security payments used by DSHS for reimbursement; and (iii) an award of attorney's fees.

DSHS moved to dismiss the action, arguing the Administration was an indispensable party that cannot be sued in state court. In response, the class argued it was not claiming the Administration has done anything wrongful, only that DSHS is unlawfully taking Social Security benefits from the class members in violation of federal law. The trial court denied the motion, without analysis, in certifying the class.

On cross motions for summary judgment, the trial court filed a memorandum opinion and entered judgment in favor of the class. The trial court held DSHS's use of Social Security benefits to reimburse the cost of foster care violates 42 U.S.C. § 407(a), and DSHS violates procedural due process by failing to provide notice, beyond that required by federal law and regulation, of the "intended result" of the appointment of DSHS as representative payee. The trial court did not address the class' remaining constitutional arguments, nor did it specifically conclude DSHS was liable for civil rights violations under 42 U.S.C. § 1983.

The trial court's judgment provided the following relief:

1. An injunction preventing DSHS from taking action to replace any private representative payee.

2. An injunction preventing DSHS from requiring any private representative payee to repay DSHS for the cost of maintaining a child in foster care from Social Security benefit payments.

3. An injunction requiring DSHS to provide written notice containing certain information to a child's parent(s) or legal guardian whenever DSHS applies to become a representative payee for the child.

4. An injunction preventing DSHS from using Social Security payments to reimburse the costs of foster care.

5. An order requiring DSHS to produce an accounting of Social Security fund disbursements for all children that had been in the custody of DSHS for the purpose of receiving foster care.

6. An order of restitution of Social Security funds used to reimburse DSHS for foster care expenses.

7. An award of attorney's fees, with the amount to be determined in the future.

DSHS appealed the trial court's judgment to Division Three of the Court of Appeals, although no error

was assigned to items 1 or 2 referenced above. Because of the importance of the issues in this case, the Court of Appeals certified the case to us and we granted the certification. After the first oral argument of the case, we remanded the matter to the trial court pursuant to RAP 9.11. The parties have supplemented the record and the trial court has made findings of fact.

ANALYSIS

A. DSHS's actions as representative payee violated 42 U.S.C. § 407(a).

Simply put, if DSHS is appointed representative payee for a foster child it will confiscate the child's SSI money to benefit the state. However, if *anyone else* is appointed, the state will bear the cost of foster care, and the child's SSI will be available to benefit the child in addition to the state- funded foster care program. The issue is whether this confiscation violates federal law. For the reasons which follow we believe it does.

DSHS admits it would probably not even apply to be a representative payee if it could not rely on the child's SSI benefits to reimburse the cost of care. By the same token, DSHS admittedly cannot actively seek reimbursement from benefits paid to *private* representative payees because Congress specifically protects Social Security benefits from transfer, assignment, execution, levy, attachment, garnishment, or other legal process under 42 U.S.C. § 407(a).[10] [FN10] Thus, DSHS receives

[10] The federal code provides, in pertinent part,

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). This section was made applicable to Title XVI benefits by 42 U.S.C. § 1383(d)(1).

reimbursement for foster care only if it serves as a representative payee, and it only serves as representative payee so it can confiscate the child's money.[11]

This scheme stands in stark contrast to 20 C.F.R. § 404.2021 which expressly provides, "Our primary concern is to select the payee who will best serve the *beneficiary's* interest." (Emphasis added.) Obviously the child is better off with any payee other than the state because DSHS must provide foster care under state law *regardless* of whether it receives a reimbursement.[12] DSHS's self-prioritization is extremely disquieting in the face of a regulatory mandate that we consider these disenfranchised children before enriching government coffers.

1. DSHS as a creditor

Whether DSHS acts as a *creditor* when it reimburses itself for foster care costs out of the foster children's Social Security Administration (SSA)

[11] The trial court found "*[f]or the sole purpose of obtaining reimbursement for foster care costs,* DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits." Clerk's Papers (CP) at 623 (Trial Court's Mem. Op. (Sept. 29, 1998) at 3) (emphasis added).

[12] DSHS forecasted it would receive $6.733 million from such reimbursement, or fully 18 percent of the state's contribution to the foster care budget of $37 million, for fiscal year 2000. CP at 1899, 1911 (Trial Court's Findings of Fact on Order of Remand, Exs. B, F).

entitlements is the crucial question. If DSHS's reimbursement scheme is that of a creditor, the antiattachment provisions of § 407(a) apply and DSHS's cost recovery policy runs afoul of a federal statute which preempts state law under the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2.

The facial logic of DSHS's reimbursement scheme demonstrates a creditor relationship, a relationship involving creditor-type acts, vis-à-vis foster children and their SSA benefits. Further, while no federal case addresses the peculiar set of facts involved here, the course of federal precedent in similar situations arising under § 407(a) undercuts the claim that DSHS complies with federal law.

In *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973), the United States Supreme Court described the broad protection § 407 affords Social Security benefits. *Philpott* declared that § 407 barred New Jersey's attempt to reach federal Social Security disability benefits in order to reimburse the state for public assistance expenditures made on behalf of the petitioners. State welfare recipients were made to execute an agreement, as a condition precedent to receiving welfare benefits, to reimburse the county welfare board with any funds that came into their possession. When Philpott refused to turn his SSA disability benefits over to the welfare board the latter sued to enforce the agreement. The Supreme Court held § 407 on its face prohibited New Jersey from reaching the petitioner's federal disability payments, explaining, "We see no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor." *Philpott,* 409 U.S. at 416, 93 S.Ct. 590.

Responding to the argument New Jersey may not be a creditor with respect to the SSA benefits, the Court continued: "§ 407 does not refer to any 'claim of creditors'; it imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a State." 409 U.S. at 417, 93 S.Ct. 590. This language evinces a federal policy with respect to SSA benefits--the "broad bar"--which controls this case.

The Supreme Court again took up § 407(a) in *Bennett v. Arkansas,* 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988), where Arkansas attempted to attach certain federal benefits paid to individuals incarcerated in Arkansas prisons to reimburse the state for maintaining a prison system. Arkansas argued an "implied exception" to the broad bar of § 407(a) (as here) where the state is providing public money for the care and maintenance of the SSA beneficiary. The Court found no such "care and maintenance" exception for states "given the express language of § 407(a) and the clear intent of Congress that Social Security benefits not be attachable." *Bennett,* 485 U.S. at 397-98, 108 S.Ct. 1204. DSHS in the instant case attempts to evade § 407(a) by arguing that it simply provides the "care and maintenance" intended by the SSA. We find that argument as unavailing, notwithstanding some factual dissimilarities, as did the Supreme Court.

Closer to home, the Ninth Circuit ruled in *Brinkman v. Rahm,* 878 F.2d 263 (9th Cir.1989) DSHS may not deduct SSA benefits as reimbursement for the costs of care and maintenance, paid out of public funds, for involuntarily committed mental health patients in state hospitals. The court noted, "The state collects this debt from the appellees by withdrawing [Old Age Survivor's and Disability Insurance] funds from appellees' accounts at the state

hospital accounting offices," finding § 407 preempts this procedure. *Brinkman*, 878 F.2d at 264. There is not a significant enough difference between DSHS's methods in *Brinkman* and its methods of reaching the foster children's SSA benefits in this case[13] to justify a different result.

The Ninth Circuit again addressed the issue in *Crawford v. Gould*, 56 F.3d 1162 (9th Cir.1995) where, under California law, patients committed to state psychiatric hospitals were held responsible for the costs of their own incarceration. California accordingly required all funds and income, including SSA benefits, to which the patient was entitled to be placed in a hospital trust account from which the state could deduct as reimbursement the costs of care and maintenance expended on the patient. The state deducted the money whether or not the patient authorized the deduction. Holding § 407 preempted this procedure, the Ninth Circuit held:

---

[13] DSHS's actual practice, as described by its Office Chief for the Office of Federal Funding in the Division of Program and Policy for the Children's Administration, is:

> to apply to the Social Security Administration (SSA) to be the Representative Payee for social security monies whenever a child is placed in foster care. If SSA chooses to make DCFS [Division of Children and Family Services] the Representative Payee, the actual checks are sent to the Department's Office of Financial Recovery and the money is then *transferred to a suspense account* in the Department's Office of Accounting Services. *This money is used to reimburse the Department* for monthly foster care expenses, including food, clothing, shelter and other personal or medical expenses as governed by the Code of Federal Regulations. Excess money is placed in trust accounts which bear interest and the interest is reported to SSA.

CP at 120 (Aff. of Richard Anderson) (emphasis added).

> Our conclusion, that "other legal process" includes the procedure that California uses to deduct Social Security benefits, is consistent with the purpose of § 407. The nonassignment provision was not designed to preclude use of only the judicial process to obtain Social Security benefits. Rather, § 407(a) is designed "to protect social security beneficiaries and their dependents from the claims of creditors." The cramped reading of § 407 California urges would enable the state to obtain Social Security benefits through procedures that afford less protection than judicial process affords.

Crawford, 56 F.3d at 1166 (citations omitted).

These cases evince an expansive interpretation of the protections of § 407. The thrust of the case law is that Social Security benefits are, for all intents and purposes, beyond the reach of the state, however clever or subtle its attempt to seize them. *Philpott* and the cases in its line, including *Crawford*, are on point and persuasive.

The state claims *King v. Schafer*, 940 F.2d 1182 (8th Cir.1991) justifies DSHS's position, particularly because DSHS acts as a representative payee under 42 U.S.C. § 405(j) for the foster children in this case. In *King* the State of Missouri, as representative payee, received SSA benefits due involuntarily committed mental patients and reimbursed itself for the care and maintenance costs expended out of public funds for the patients. The patients argued the state's application to become the patient's representative payee to accept the patients' SSA benefits violated the "other legal process" provision of § 407(a). However the *King* court disagreed, noting the illogic of presuming § 407(a) would outlaw a procedure (applying to become representative payee) expressly authorized by §

405(j). "We cannot agree with the plaintiffs," wrote the *King* court, "that the Department's participation in the administrative proceeding to become a representative payee is the kind of coercive legal process envisioned by § 407(a)." *King*, 940 F.2d at 1185.

In light of *King*, and the fact that DSHS enjoys the status of representative payee (for most) of the foster children under § 405(j) and 20 C.F.R. § 404.2001(a), the significance of the state's representative payee status requires further discussion.[14]

The *King* plaintiffs challenged the state's procedure for applying to become representative payee, arguing that *procedure* (incident to which the state seized the mental health patient's SSA benefits) violated § 407(a) as "other legal process." However here it is not DSHS's procedure to apply to become the foster children's representative payee that is under attack; rather it is DSHS's practice of reimbursing itself from the foster children's SSA benefits once it *becomes* representative payee.

---

[14] Apparently DSHS is not the representative payee for Danny Keffeler, the class representative. Keffeler's grandmother apparently remained his representative payee, despite DSHS's zealous efforts to remove her. Br. of Appellants at 1-4. This fact is of some interest in light of *King*, because the *King* court found that with respect to those mental health patients for whom the state was *not* the representative payee, the state's attempts to reach the SSA benefits *did* constitute "other legal process" and was preempted by § 407(a). *King v. Schafer*, 940 F.2d 1182, 1185 (8th Cir.1991). We doubt the *King* court's distinction is internally consistent but refrain from entertaining those doubts, as it does not further the analysis on this point.

The difference is subtle, but the distinction is crucial. There is nothing ipso facto wrong with DSHS applying to become the representative payee for certain foster children, as § 405(j) and the SSA's accompanying regulations explicitly contemplate. We may even agree the representative payee application is not "other legal process." But it is equally clear the reimbursement process *is* "other legal process," given the definition of that phrase furnished by *Philpott, Brinkman, Bennett,* and *Crawford.* Accordingly, *King* must be distinguished, as Judge Burchard below correctly concluded, "[T]here is no legal basis for giving foster children less protection for their social security benefits than adult welfare recipients, state prisoners or involuntarily committed mental patients receive." CP at 627 (Trial Court's Mem. Op. (Sept. 29, 1998) at 7).

The state also claims *C.G.A.*, 824 P.2d 1364 supports its position. But *C.G.A.* only said the state may apply to become a representative payee. *C.G.A.*, 824 P.2d at 1366. The court *did not hold* the state could reimburse itself but deferred that determination to the Social Security agency under the doctrine of primary jurisdiction. *Id.* at 1370. Like *King*, *C.G.A.* stands for no more than the uncontested proposition DSHS may apply to become a representative payee.

DSHS reimbursement is barred by § 407(a) because despite DSHS's status as representative payee it performs the role of creditor when it takes the foster child's SSA entitlement to reimburse itself for moneys spent on the child. A representative payee may not be a "creditor of such individual who provides such individual with goods and services for consideration." 42 U.S.C. § 405(j)(2)(C)(i)(III).

However to claim DSHS does not provide goods and services for consideration is only to say that DSHS is not the kind of creditor which § 405(j) excludes from representative payee status. It is not to say the definition of a creditor "who provides such individual with goods and services for consideration," *id.*, is an exhaustive definition of other creditors who do not, nor is it to say DSHS cannot become a creditor or act like a creditor despite the fact it is a representative payee. If DSHS is allowed under § 405(j) to become a representative payee for the foster children, that fact does not establish the legality of taking the child's money.

Furthermore, the bare logic of reimbursement also implies a creditor-debtor relationship. Common sense and dictionary definition of "reimburse" is "[t]o pay back, to make restoration, to repay that expended; to indemnify, or make whole." *Black's Law Dictionary* 1287 (6th ed.1990). In common parlance one need not make a payback unless something "loaned" was "owed" by the recipient back to the payee. In fact the public policy of our state to recover the costs expended from public funds on foster children implies exactly this sort of debtor-creditor relationship.[15]

---

[15] That policy finds its statutory expression in RCW 74.13.060:

> The secretary [of DSHS] or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:
>
> (1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.
>
> (2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

As DSHS presently conceptualizes the matter, RCW 74.13.060 (and its implementing regulation, former WAC 388-70-069)[16] requires it to reimburse itself for the public assistance it has meted out to foster children from money, including SSA entitlements, that come into the children's possession. If the Legislature and DSHS did not hold the costs of foster care were somehow "owed" back to the taxpayers, it would not claim the right of DSHS to "reimburse" itself on the taxpayer's behalf.

---

[16] The code states, in pertinent part, that:

> (1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received....
>
> (a) Income includes SSI, RSDI, veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income....
>
> (2) Any person, agency, or court which receives any payments on behalf of a child in foster care shall remit such payments to the office of support enforcement, in accordance with WAC 388-70-082.

Former WAC 388-70-069(1)(a), (2).

DSHS's representative payee status further undercuts the legality of its reimbursement process because a representative payee is charged under SSA regulation, 20 C.F.R. § 404.2035, with the responsibility to "[u]se the payments he or she receives only for the use and benefit of the *beneficiary* in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the *beneficiary.*" *Id.* § 404.2035(a) (emphasis added). We seriously doubt using the SSA benefits to reimburse the state for its public assistance expenditure is in all cases, or even some, "in the best interests of the beneficiary."

Using this money for the care and maintenance of the beneficiary, as required under 20 C.F.R. § 404.2035(a), would indeed be in the best interest of the beneficiary, but that is significantly different from using the money to reimburse the state for payments it made for the care and maintenance of the foster child--especially when that payment to the state cannot be legally compelled and, moreover, could be used or conserved for other special needs of the child.

As the state concedes, DSHS takes on a fiduciary or quasi-fiduciary role when it acts as representative payee. Br. of Appellants at 3. DSHS's reimbursement procedure hence constitutes a conflict of interest precisely because DSHS uses the SSA benefits it receives as representative payee in a manner inconsistent with the best interests of the foster children entitled to the money. However worthy cost recovery might be, DSHS cannot violate federal law at the expense of foster children to accomplish it.

Accordingly we hold each instance of reimbursement makes DSHS a creditor, or, if not a creditor, then at least committed to a creditor-type action that is

preempted by the "broad bar" of § 407(a). DSHS's application under § 405(j) to become a foster child's representative payee is at best immaterial to the analysis pertaining to its use of SSA benefits as reimbursement, or is at worst incompatible with that use of the benefits, as discussed above. Given our view that the state's actions violate the Supremacy Clause we find it unnecessary to consider other alleged constitutional infirmities such as deprivation of property without due process or denial of the equal protection of the law. *See* U.S. Const. amend. XIV.

B. The trial court award of attorney fees is not sufficiently specific.

The summary judgment which we review provided:

> It is hereby ordered that plaintiff should be awarded attorney fees, the amount of which, and the theory under which awarded, shall abide future ruling of this court.

Pl.'s Order Granting Pl.'s Mot. for Summ. J., CP at 666. The quoted language does not clarify the scope or basis of the attorney fee award and therefore must be revisited on remand.

Under the American Rule for attorney fees, compensation may be awarded only if authorized by contract, statute, or a recognized ground in equity. *Bowles v. Dep't of Ret. Sys.*, 121 Wash.2d 52, 70, 847 P.2d 440 (1993) (citing *Painting & Decorating Contractors of Am., Inc. v. Ellensburg Sch. Dist.*, 96 Wash.2d 806, 815, 638 P.2d 1220 (1982); *Seattle Sch. Dist. 1 v. State*, 90 Wash.2d 476, 540, 585 P.2d 71 (1978)). A well-established

equitable ground for awarding attorney fees is the common fund doctrine. *See Covell v. City of Seattle*, 127 Wash.2d 874, 891, 905 P.2d 324 (1995); *Bowles*, 121 Wash.2d at 70, 847 P.2d 440; *Seattle Sch. Dist. 1*, 90 Wash.2d at 542-45, 585 P.2d 71. It applies when a litigant preserves or creates a common fund for the benefit of an ascertainable category of persons. *Miotke v. City of Spokane*, 101 Wash.2d 307, 339, 678 P.2d 803 (1984) (quoting *Pub. Util. Dist. No. 1 of Snohomish County v. Kottsick*, 86 Wash.2d 388, 390-91, 545 P.2d 1 (1976)). The doctrine serves important public functions, and, in light of the purpose of the American Rule for attorney fees, should be applied only when such functions are met. *Accord Covell*, 127 Wash.2d at 892, 905 P.2d 324 (awarding attorney fees based on the common fund doctrine because the policy reasons "clearly are supported"). If properly applied, it provides greater access to those who otherwise may be unable to afford the services of an attorney. *Bowles*, 121 Wash.2d at 71, 847 P.2d 440.

Although the common fund doctrine provides an avenue whereby attorneys may be reimbursed from the fund created, other equitable and/or statutory grounds may allow an affirmative recovery against the nonprevailing party. 42 U.S.C. § 1988, for example, may provide an arguable basis for such an award; however, neither the trial court nor the parties have adequately articulated the equitable or statutory basis to impose liability against the state for reasonable attorney fees and expenses of litigation in the context of this case. This issue therefore must be considered further on remand.

CONCLUSION

We therefore hold DSHS violated § 407(a) of the Act when acting as the representative payee under § 405(j) of the Act by reimbursing itself for foster care payments,

contrary to the Supremacy Clause of the United States Constitution. We therefore affirm the trial court's result, remanding for further appropriate proceedings consistent with this opinion. The class shall recover its statutory costs on appeal without prejudice to a further award of reasonable attorney fees to be determined on remand.

ALEXANDER, C.J., and SMITH, JOHNSON and MADSEN, JJ., concur.

BRIDGE, J. (concurring in part/dissenting in part). I agree with the majority that the Washington State Department of Social and Health Services (DSHS) impermissibly used social security funds to reimburse itself for *past due* foster care payments. However, the majority goes too far in concluding that *any* use of social security funds by DSHS violates the antiattachment rule. Under a fair reading of the controlling federal statute and regulatory authority, DSHS is entitled to use the funds to pay for *current* maintenance costs, provided that any special needs of the children are satisfied first.

The federal law governing the appointment of representative payees and the use to which funds received on behalf of beneficiaries can be put is 42 U.S.C. § 405(j). RCW 74.13.060 allows DSHS to become the custodian (i.e. representative payee) "without compensation" of social security funds[1] payable to foster children:

> The secretary or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW.

Tracking federal law, state law provides that once DSHS becomes the custodian ("representative payee") of the funds, DSHS is permitted to spend these funds *only* for the child's "personal needs" or to reimburse the state for "the amount of public assistance otherwise payable to" the child during the period for which the benefits were paid. RCW 74.13.060(1),

[1] Social Security (SSA) and Supplemental Security Income (SSI) benefits.

(2). Former WAC 388-70-069 (1983), *repealed by* 01-08-047 (Apr. 30, 2001), specifically allowed the social security funds to be used on behalf of the child to help defray the state's cost for foster care:

> (1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received, except for resources held in trust for an American Indian child according to provisions in WAC 388-28-650.
>
> (a) Income includes SSI, RSDI [retirement survivors disability insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income.

The majority concludes that "If DSHS's reimbursement scheme is that of a creditor, the antiattachment provisions of § 407(a) [of the Social Security Act] apply and DSHS's cost recovery policy runs afoul of a federal statute which preempts state law." Majority at 275. This statement is misleading in its scope. The Social Security Act, chapter 7, 42 U.S.C., does not rule out appointment of a creditor as representative payee in all situations. One of the exceptions to the antiattachment provisions of the act allows the appointment of "an individual who is determined by the Commissioner ... to be acceptable to serve." 42 U.S.C. § 405(j)(2)(C)(iii)(V). Thus, even if DSHS is characterized as a creditor, the commissioner of social security may find, and here *has* found, DSHS acceptable to serve as a representative payee

for these children in foster care.[2] The determination of the Social Security Act should control. The real issue, in my view, is the conflict of interest that arises when DSHS serves both as a representative payee and as a creditor for the *same* funds (which funds belong to the eligible child, the beneficiary) and the permissible uses of such funds.

Federal regulations not only govern the selection of a representative payee, but also define the lawful uses to which a representative payee may put the social security funds entrusted to its care. Specifically, a representative payee has a responsibility to "[u]se the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary." 20 C.F.R. § 416.635(a). *Current maintenance,* including the cost of food, shelter, clothing, medical care, and personal-comfort items is deemed to be for the use and benefit of the beneficiary. 20 C.F.R. § 416.640(a).

An example in the regulations clarifies the definition of "use and benefit" in the context of payments to an institution for current maintenance of the beneficiary and indicates a clear intent that special needs of the beneficiary should take precedence over general maintenance or reimbursement for care.[3] The example states that the

[2] If the commissioner may find an individual acceptable to serve, he may presumably find an entity acceptable to serve. This interpretation is reinforced by the fact that the commissioner routinely appoints entities such as DSHS to serve as representative payees.

[3] *Example:* An institutionalized beneficiary is entitled to a monthly Social Security benefit of $320. The institution charges $700 a month for room and board. The beneficiary's brother, who is the payee, learns the beneficiary needs new shoes and does not have any funds to purchase miscellaneous items at the institution's canteen.

representative payee should deduct the cost of special needs items from the amount paid to the institution, and also makes clear that any remaining money may be used for current maintenance.

The majority relies on four federal cases to assert that DSHS may not use social security funds for current maintenance: *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973) (holding that New Jersey may not attach social security benefits to reimburse itself for welfare benefits); *Bennett v. Arkansas*, 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed.2d 455 (1988) (holding that Arkansas may not attach federal benefits for care and maintenance of prisoners); *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir.1989) (forbidding Washington State from attaching federal benefits for the care of involuntarily committed mental health patients); and *Crawford v. Gould*, 56 F.3d 1162 (9th Cir.1995) (holding that California may not deduct the costs of caring for psychiatric inpatients from a trust account to which social security payments were deposited).

These cases are readily distinguished from the DSHS practice at issue here. Critically, none of the cited federal

> The payee takes his brother to town and buys him a pair of shoes for $29. He also takes the beneficiary to see a movie which costs $3. When they return to the institution, the payee gives his brother $3 to be used at the canteen.
>
> Although the payee normally withholds only $25 a month from Social Security benefit for the beneficiary's personal needs, this month the payee deducted the above expenditures and paid the institution $10 less than he usually pays.
>
> The above expenditures represent what we would consider to be proper expenditures for current maintenance.
>
> 20 C.F.R. § 404.2040(2)(b).

cases involve the expenditure of social security benefits by a state that was designated as a representative payee. In fact, the class certified in *Brinkman* specifically excluded patients for whom the state served as representative payee. *Brinkman*, 878 F.2d at 264. As explained above, under federal regulations a representative payee has considerable authority to spend the funds entrusted to its control, provided the expenditures are for the best interests of the beneficiary. 20 C.F.R. § 416.635(a).

Thus, the issue as I see it is not whether DSHS may spend the funds for current maintenance, provided it gives priority to special needs of the foster children, but whether it may use those funds to reimburse itself for *past* maintenance or for its own administrative services, such as mileage reimbursements for social workers. The fact that DSHS in the context of reimbursing itself for *past* care of the beneficiary puts its need for reimbursement ahead of the needs of the foster children further demonstrates the fundamental conflict between its roles as representative payee and creditor.

The federal mandate to give priority to the special needs of the beneficiary directly conflicts with the express policy of DSHS to conserve the expenditure of public assistance funds on foster care and thereby lighten the burden on the taxpayer. *See* chapter 74.20 RCW (Support of Dependent Children):

> It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or

> completely meet the financial needs of the children of this state.

RCW 74.20.010. The state aggressively pursues this recovery policy, not only seeking money for current maintenance but also sweeping lump sum payments into the treasury to prevent a child's account from exceeding the $2,000 resource limit imposed by the SSA.

In order to provide states with an incentive to provide financial assistance to needy individuals awaiting disposition of their SSI applications, Congress provided that back payments made at the time the secretary makes the *first* payment would be exempt from the general antiattachment rule. 42 U.S.C. § 1383(g)(2). However, a recent case held that a retroactive payment after a period of denial is not the same as an initial payment and therefore does not fall under the exemption to the antiattachment rule that is found in 42 U.S.C. § 1383(g)(2). *Catarine v. Wing*, 710 N.Y.S.2d 569, 274 A.D.2d 310 (2000). *Accord Conaway v. Soc. Servs. Admin.*, 298 Md. 639, 471 A.2d 1058 (1984) (holding that the use of conserved social security benefits to reimburse the cost of past foster care is prohibited). Thus, the lump sums that DSHS "sweeps" into the treasury to reimburse the state for past foster care expenses cannot fall under the initial payment exception. There is no other exception which would validate DSHS's action.

This sweeping of lump sums not only is unauthorized under any exception to § 407(a), but also often constitutes double reimbursement. The sums "swept" to the treasury frequently reimburse the state for amounts already paid by the federal government under Temporary Assistance for Needy Families or paid by parental support. DSHS apparently keeps no accurate record to allow tracing of the "swept" sums.

Under § 407(a), rights to future payments are not transferable or assignable.

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). DSHS receives the payments not on its own behalf, but on behalf of the beneficiaries, and is not permitted to assign pending (i.e., future) payments to the reimbursement of its expenditures on behalf of the foster children. Where an agency puts reimbursement to itself ahead of the best interests of the child, ignoring the policy expressed in the federal regulations to prioritize the child's special needs, it effectively transfers the payments to its own use. This transfer from the state in its role as representative payee to the state in its role as guardian of the public purse is contrary to § 407(a). Where the agency pursues that policy to the extent of double reimbursement, the conflict of interest is egregious.

To the extent that RCW 74.20A.010 encourages the state to "sweep" a child's benefits into the treasury to repay past-due foster care, I agree with the majority that the statute is incompatible with § 405(j), which forbids any "substantial conflict of interest" between the payee. U.S.C. § 405(j)(2)(C)(iv)(II). *See also* 42 U.S.C. § 405(j)(1)(A) (mandating removal of a representative payee if the commissioner or a court of competent jurisdiction later determines that it has misused any individual's benefit.) It is also incompatible with § 407(a), which prevents transfer of

the benefits. Under the Supremacy Clause of the United States Constitution, federal law takes precedence. Thus, any use of social security funds for purposes other than current care and maintenance is unlawful, as is giving priority to maintenance over the children's special needs.

Remedies

I agree with the majority that in relying on RCW 74.20A.010, DSHS has given preference to the interests of the taxpayer over the special needs of foster children and has acted as creditor by reimbursing itself for past payment of foster care, directly contrary to § § 405(j) and 407(a) of the Social Security Act. But for reasons already set forth in this opinion, I would remand this matter to the trial court with directions to modify the injunction to prevent DSHS from using social security payments to reimburse the costs of *past due* foster care *or other expenses not directly related to current maintenance, and to require DSHS give special needs a higher priority than current maintenance.* On remand, the trial court should order DSHS to produce an accounting of social security fund disbursements for all children that had been in the custody of DSHS for the purpose of receiving foster care, establish restitution of social security funds used to reimburse DSHS for *past due* foster care expenses, *other expenses not directly related to current maintenance, and unmet special needs,* and determine appropriate attorney fees.

I thus respectfully concur in part and dissent in part from the majority opinion.

IRELAND, J., and GUY, J.P.T., concur.

THE SUPREME COURT OF WASHINGTON

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, Guardian, and other persons similarly situated, Respondents, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, LYLE QUASIM, Director of the Department of Social and Health Services, et al., Appellants.	No. 67680-1 ORDER DENYING MOTION FOR RECONSIDERATION

The Court having considered the Appellants' Motion for Reconsideration;

Now, therefore, it is hereby

ORDERED:

That the Appellants' Motion for Reconsideration is denied.

DATED at Olympia, Washington this 14th day of December 2001.

//s//
Chief Justice Gerry L. Alexander

I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 14th day of December 2001

//s//
C.J. MERRITT
Clerk of the Supreme Court, State of Washington

cc: Debra Casparian
Lawrence Lockwood
Rodney Reinbold
Deborah Kant
Colette Matzzie
William Collins
Richard Price
Eugene Studer
William Kanter
Reporter of Decisions

THE SUPREME COURT OF WASHINGTON

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, Guardian, and other persons similarly situated, Respondents, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, LYLE QUASIM, Director of the Department of Social and Health Services, et al., Appellants.	MANDATE NO. 67680-1 Okanogan County No. 96-2-00157-2

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Okanogan County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on October 11, 2001, became the decision terminating review of this Court in the above entitled cause on December 14, 2001. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: No cost bills having been timely filed costs are deemed waived. Order Denying Motion for Reconsideration was entered here in [sic] on December 14, 2001. Copy attached.

THE SUPREME COURT OF WASHINGTON

GUARDIANSHIP ESTATE OF DANNY KEFFELER, Respondent, by WANDA PIERCE, Guardian, and other persons similarly situated, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, et al., Appellants.	No. 67680-1 ORDER ON REMAND

Oral argument was heard in the above reference case on June 24, 1999. The Court having considered the above case;

Now, therefore, it is

ORDERED:

The case is remanded pursuant to RAP 9.11 to the trial court for the record to be supplemented as follows:

1. The State should submit the August 1998 audit by the Social Security Administration of the Department of Social and Health Services referred to at page seven of the amicus curiae brief of the Commissioner of the United States Social Security Administration.

2. The parties should submit the following information and the trial court make findings of fact on the following:

a. The current number of foster care children in the State's custody pursuant to chapter 74.13 RCW.

b. The number of such children who are also beneficiaries of any Social Security payments, identifying the specific program under which the payments are made.

c. The number of children identified in paragraph b for whom the State is the representative payee pursuant to the provisions of 42 U.S.C.A. § 405(j) (1998).

d. A detailed explanation of how the State processes and uses Social Security payments it receives as the representative payee of foster care children, to include the following information:

   i. Whether the State maintains individual accounts for foster care children;

   ii. How the State administers those accounts with respect to the $2,000 limit on accumulation of Title XVI Social Security payments;

   iii. Whether and how Social Security payments to the State receives as representative payee are "passed through" to the foster parents of the beneficiary children.

e. A detailed explanation of the services the State performs on behalf of foster care children in its capacity as representative payee.

f. The number of class members and how far back in time their claims extend.

The parties may make any additional arguments and submit additional evidence to assist the trial court in its determination.

The trial court is directed to expedite the hearing of this matter and return its findings of fact to this Court as soon as practical.

DATED at Olympia, Washington this 2nd day of December, 1999.

//s// [Richard P. Guy]
CHIEF JUSTICE

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, by WANDA PIERCE, Guardian, and other persons similarly situated, Plaintiffs, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Defendant, And LYLE QUASIM, DIRECTOR OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES; AND MICHAEL R. HOBBS, PROGRAM MANAGER FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICE, Additional Defendants.	No. 96-2-00157-2 SUPREME COURT NO. 67680-1 COURT'S FINDINGS OF FACT ON ORDER OF REMAND FROM SUPREME COURT

THIS matter came before this court pursuant to the Order on Remand issued by the Supreme Court pursuant to RAP 9.11 on December 2, 1999. The order on Remand directs this court to make findings of fact on the following:

a. The current number of foster care children in the State's custody pursuant to chapter 74.13. RCW.

b. The number of such children who are also beneficiaries of any Social Security Payments, Identifying the specific program under which the payments are made.

c. The number of children identified in paragraph b for whom the State is the representative payee pursuant to provisions of 42 USCA § 405(j) (1998).

d. A detailed explanation of how the State processes and uses social security payments it receives as the representative payee of foster children, to include the following information

i. Whether the State maintains individual accounts for foster care children;

ii. How the State administers those accounts with respect to the $2,000 limit on accumulation of title XVI Social Security Payments;

iii. Whether and how Social Security Payments the State receives as representative payee are "passed through" to the foster parents of the beneficiary children.

(e) A detailed explanation of the services the State performs on behalf of foster care children in its capacity as representative payee.

(f) The number of class members and how far back in time their claims extend.

After reviewing the affidavits, depositions, and the exhibits filed herein and having considered counsel's arguments, the court makes the following findings of fact in response to the questions posed in the Order on Remand.

Paragraph 1 of the Supreme Court's Order on Remand.

1. The 1998 audit conducted by the Social Security Administration of the Department of Social and Health Services referred to at p. 7 of the Amicus Curiae Brief of the Commissioner of the United States Social Security Administration is attached hereto as Exhibit A and herein incorporated as if fully set forth.

Paragraph 2(a) of the Supreme Court's Order on Remand.

2. The Department has historically observed a time lag when extracting this type of data from the Children's Administration's automated information system (Case Management Information System or CAMIS). The Department believes monthly data more accurately reflects the number of children in the custody of DSHS in out-of-home placement than either a specific date or a yearly average. Thus, the Department reported the number of foster children in the state's custody in September 1999 as the most recent reliable data available as of January 15th, when the information was provided to the trial court. Affidavit of Tamara Erickson, p. 3, para. 5.

3. In September 1999, there were 10,578 foster children in the state's custody pursuant to RCW 74.13. Affidavit of Tamara Erickson, p. 3, para. 4.

4. In September 1999, there were an additional 2,352 foster children for whom the Children's Administration may be responsible for providing the funding for maintenance and care but who were in the custody of a private child-placing agency, tribe or tribal child-placing agency, or other organization. Affidavit of Tamara Erickson, p. 3, para. 4.

5. Additionally, another 567 individuals under the age of 21 receive services from the Department of Social and Health Services (DSHS), Division of Developmental Disabilities, under RCW 74.13.350. Of these individuals, 303 of them receive either SSA or SSI. These individuals are in the legal custody of their birth/adoptive parents, have a guardian, or may be emancipated. Affidavit of Linda Gil, p. 2, para. 3; Linda Gil Deposition, p. 50, ll. 5-7.

Paragraph 2(b) of the Supreme Court's Order on Remand.

6. In September 1999, there were approximately 1,480 children in foster care who were receiving social security benefits. Affidavit of Tamara Erickson, p. 4, para. 6.

7. Approximately 923 of the 1,480 children in foster care in September 1999 received SSI benefits under Title XVI of the Social Security Act. Approximately 469 received SSA benefits under Title II of the Social Security Act, and approximately 88 received both SSA and SSI benefits concurrently. Affidavit of Tamara Erickson, p. 4, para. 6.

Paragraph 2(c) of the Supreme Court's Order on Remand.

8. In September 1999, the number of children in the State's custody pursuant to chapter 74.13 RCW, and for whom the Secretary of DSHS is the representative payee pursuant to provisions of 42 USCA § 405(j) (1998) was 1,411. Affidavit of Karen Kegley Justinen, p. 2, para. 3.

9. Of these 1,411 children for whom DSHS serves as representative payee, approximately 1,325 of them are in foster care with the Children's Administration. The remaining 86 children are placed by the Division of Developmental Disabilities (DDD). Affidavit of Karen Kegley Justinen, p. 2, para. 3.

10. At the present time, the Cash Accounting Unit receives $700,000 to $800,000 a month in SSI and SSA funds. Approximately $505 per child and $520 per child is received for two different SSI payments and approximately $250 per child, on the average, is received in SSA payments. Karen Kegley Justinen Deposition, p. 70, ll. 13-25; p. 71, ll. 1-8.

11. DSHS has forecasted receipt of $6,733,000 in SSI/SSA revenue for the year 2000 for children in foster care. See the Budget Forecasting Document from the Tamara Erickson Deposition, attached hereto as Exhibit B.

Paragraph 2(d) of the Supreme Court's Order on Remand.

12. Whenever a child in State foster care is entitled to receive SSI or SSA benefit payments, the State applies to the Social Security Administration to become the representative

payee except for developmentally disabled children since July 1988. Affidavit of Tamara Erickson, pp. 4-5, para. 8.

13. Title XVI (SSI) benefits are based on a child's disability. Title II (SSA) benefits are based on a death or disability of a parent who contributed to the Social Security program. Affidavit of Karen Kegley Justinen, p. 2, para. 4.

14. The accounting for the way in which the state processes and uses social security payments received by the Secretary of DSHS on behalf of foster children in the custody of DSHS, when the Secretary is their representative payee, is done by the DSHS, Office of Accounting Services, Trust Fund Unit. The Trust Fund Unit is also responsible for the accounting of other monies received on behalf of children in the care of DSHS, including Veterans Administration and Railroad Retirement benefits, and Excess Child Support Payments. Affidavit of Karen Kegley Justinen, p. 2, para. 2.

15. The Trust Fund Unit is not part of the DSHS Children's Administration, which is responsible for child protective, child welfare, family reconciliation and licensing services in Washington State. Karen Kegley Justinen Deposition, p. 8. The Children's Administration is responsible for foster care services for those children who cannot remain in their own home as a result of abuse or neglect. Affidavit of Tamara Erickson, p. 2, para. 1.

16. Karen Kegley Justinen oversees the Trust Fund Unit, which records Title II (SSA) and Title XVI (SSI) benefit payments received by the Cash Accounting Unit, on behalf of the foster children, and maintains an individual "subsidiary account" for each child receiving these benefits. Affidavit of Karen Kegley Justinen, pp. 2-3, paras. 4-5.

17. Every month, the Department receives SSI and SSA payments on behalf of foster children in the custody of DSHS, and for whom the Secretary is their representative payee, and except for "retroactive SSI payments," deposits these funds in a Foster Care Trust Fund Account at the State Treasurer's Office. Affidavit of Karen Kegley Justinen, p. 3, para. 4. Karen Justinen Deposition, p. 9, ll. 6-15.

18. Retroactive SSI payments are lump sum payments of over six times the monthly benefit amount. Since October of 1996, these lump sum retroactive SSI payments have been subject to different rules and are accounted for differently. They are deposited by the Social Security Administration directly to a dedicated interest-bearing account at a local bank. Payments deposited to this dedicated account, and the interest earned, are credited to the individual child's individual subsidiary account maintained by the Trust Fund Unit. Since October of 1996, regulations prohibit use of funds from the dedicated accounts to provide for basic foster care services. The funds can only be used for permitted expenditures of special needs, primarily related to the child's impairment. Affidavit of Karen Kegley Justinen, p. 3, para. 6.

18.1 The Department has not established how many children have dedicated accounts. It is possible this information was not requested or ordered produced by the court. The record does not show how many dedicated accounts there are, however, the Department has produced samples of two such dedicated accounts. None of the 50 random accountings include dedicated accounts. This information is not included in the accounting provided.

18.2 Prior to October of 1996, a different procedure regarding SSI lump sum payments appears to have been followed. An example of this is provided in the accounting for Jasmine Cotton, where it appears that a lump sum

payment of the amount of $11,676 was received on May 8, 1996 and on June 2, 1996 the Children's Administration was reimbursed a total amount of $11,696.00 for past foster care expenses from April of 1994 through April of 1996. There is no evidence to contradict the finding that this was the ordinary procedure followed prior to October of 1996.

19. The Trust Fund Unit has provided a summary page for each of the 50 children's accounts provided pursuant to court order. The summary page lists six separate categories as follows:

"Payments Received"	Amount of SSI/SSA or both received.
"Interest Earned"	Interest earned from money held in trust.
"Payments Returned"	Amount of Money Returned to the Social Security Administration
"Account Disbursements"	SSA and or SSI Monies Spent Directly for the Benefit of the Child for Items Other Than Basic Foster Maintenance Such as Clothing, Toys, Computers, Summer Camps, Medical/Dental Expenses, Educational Expenses, etc. (See Summary Social Security Accounting Cover Pages for Thomas Bakkon and Danetta Hutchinson, copies of which are attached hereto and herein incorporated as if fully set forth as Appendix "7")

"Foster Care Reimbursements"	Amount authorized by Trust Fund Unit to be paid from the Children's Administration Trust Fund Account.
"Balance"	Balance in the child's trust fund account.

(See Summary Social Security Accounting Cover Pages for Thomas Bakkon and Danetta Hutchinson, copies of which are attached hereto and herein incorporated as if fully set forth in Exhibit "G".)

Paragraph 2(d)(i) of the Supreme Court's Order on Remand. (Individual Accounts)

20. The DSHS Office of Accounting Services, Trust Fund Unit, maintains an individual "subsidiary" account for each of the 1,411 children in the State's custody pursuant to chapter 74.13 RCW, and for whom the Secretary of DSHS is the representative payee pursuant to provisions of 42 USCA § 405(j) (1998). Affidavit of Karen Kegley Justinen, p. 3, paras. 4-5.

Paragraph 2(d)(iii) of the Supreme Court's Order on Remand. (Pass Through)

(Note, paragraph 2d(iii) of the Order on Remand is addressed prior to paragraph 2d(ii) for better continuity.)

21 The source of the funds available to the Children's Administration for foster care includes Federal and State match Title IV-E funds, TANF, SSI, SSA monies, and parental child support.

22. In developing the amount of the State's funds needed to make up the balance of the total foster care budget the State includes as part of its revenue resources, SSA and SSI payments anticipated to be received by DSHS as representative payee. Tamara Erickson Deposition, p. 41, ll. 14-25, p. 42, p. 43, l. 4. See the Budget Forecasting Document from the Tamara Erickson Deposition, attached hereto as Exhibit B.

23. The State's inclusion of anticipated SSA and SSI children benefit payments in the State budget reduces the amount of money that the legislature is required to appropriate to meet the State's foster care expenditure responsibilities. Tamara Erickson Deposition, p. 42, ll. 18-25, p. 43, ll. 1-4.

24. The term "pass through" in the context of SSI and SSA benefits is not one that is used by the DSHS Trust Fund Unit. Karen Kegley Justinen Deposition, p 17, l. 25; p. 18, ll. 1-8.

25. The Children's Administration does not normally directly purchase the food, clothing and shelter that a child in foster care needs. Rather, such items are generally purchased and provided to a foster child by a foster parent. The Children's Administration pays foster parents a base amount from a pre-existing schedule. See the Family Foster Care Rates schedule, attached as Exhibit C and by this reference is incorporated herein. The special needs and exceptional costs may be provided if funds are available.

26. Where a special need or extra item is authorized, the Trust Fund Unit will issue a check drawn from a child's subsidiary account where SSI and SSA benefits were deposited to issue a payment directly to a foster parent, store, or other service provider. Such expenditures are authorized

under the discretion of the representative payee who considers the extent that it benefits the client among other considerations.

27. The Trust Fund Unit typically uses a child's social security payments to pay for a child's basic foster care expenses. Every month the Children's Administration generates a report that shows for each child in foster care the amount of money paid by the Children's Administration to the care provider for the cost of that care. The Trust Fund Unit reviews the report and compares it to the child's trust fund account to determine the amount to be reimbursed for the child's foster care. Affidavit of Karen Kegley Justinen, p. 4, para. 8.

28. Each month the Trust Fund Unit accesses Children's Administration's computer generated list of "reimbursable foster care expenses" in order to determine how much of the children's SSI and SSA funds it will direct the State Treasurer to pay to Children's Administration.

29. In general, if the amount in the trust fund account is adequate to reimburse the entire cost of the foster care, as claimed by Children's Administration, the entire claimed amount is paid. If the funds in the trust fund account are not adequate to reimburse the entire cost of the foster care, the Trust Fund Unit uses up to the amount available in the trust fund account. The amount to be paid for foster care is transferred from the Trust Fund Unit's Foster Care Trust Fund Account to the Children's Administration. Affidavit of Karen Kegley Justinen, p. 4, para. 8.

30. The representative payee has the option to authorize expenditure of all of the SSA and or SSI benefit payments it receives on items other than current foster care maintenance.

Karen Kegley Justinen Deposition, p. 76, ll. 14-25, p. 77, ll. 1-4.

31. The Trust Fund Unit has the authority to disburse from a child's trust fund account monies for "extra items and special needs" for the "direct benefit" of the child. Affidavit of Karen Kegley Justinen, p. 4, para. 9; Trust Fund Handbook Section 3, Account Disbursements.

32. This discretion goes so far as to allow all of the child's trust funds to be expended for extra items and special needs with nothing to be paid to Children's Administration for "reimbursement." Karen Kegley Justinen Deposition, p. 18, ll. 9-25, p. 26, ll. 3-25, p. 27, ll. 1-2, p. 39, ll. 11-17, p. 76, ll. 14-25, p. 77, ll. 1-4.

33. "Direct benefit" is the standard by which the representative payee is to judge approval of any disbursement requests. Karen Kegley Justinen Deposition, p.. 76, ll. 14-15.

34. Children's Administration staff can request that a child's Social Security payment(s) be used for the child's extra items or special needs instead of for basic foster care costs. Children's Administration staff can also request that a child's Social Security payments be conserved. Conservation can be employed for a time period prior to their emancipation to allow a child to have funds available when they transition to living independently, or for further education or other approved purposes for the direct benefit of the child. Affidavit of Karen Kegley Justinen, pp. 4- 5, paras. 9-10.

35. Upon request from the Children's Administration worker, funds may be disbursed from a child's trust fund account for both extra items and special needs of the child, subject to Trust Fund Unit approval. Examples of the most common disbursements are for computers, educational

expenses, summer camp, counseling, toys, clothing, athletic equipment, orthodontics, etc. Affidavit of Karen Kegley Justinen, pp. 4-5, paras. 9-10.

36. Examples of extra items or special needs which the Trust Fund Unit recognized as appropriate expenditure of SSI and SSA funds are computers, educational expenses, summer camp, counseling, toys, clothing, athletic equipment, orthodontics, etc. Affidavit of Karen Kegley Justinen, p. 4, para. 9.

37. The Department of Social and Health Services, Office of Accounting Services, Trust Fund Handbook, Section 3 provides, in part, as follows:

> USE OF FUNDS: Funds can be used for any goods or services that directly benefit the client. Examples include clothing, toys, computer, summer camp, medical/dental expenses (not covered by medical coupons), educational expenses, etc. (our emphasis) (Trust Fund Handbook Section 3.) (Karen Kegley Justinen Deposition, Exhibit 5, Section 3.)

38. The Secretary of DSHS is the representative payee. The record does not establish that the Secretary or anyone else has issued separate written instructions or guidelines establishing when and if special needs, extra items and savings should be requested or approved. Affidavit of Karen Kegley Justinen, p. 2, paras. 1-2; Karen Kegley Justinen Deposition, p. 48, ll. 12-25; p. 49, ll. 1-11.

39. The head of the Trust Fund Unit is unaware of what the caseworkers in the field are told or what information they are provided regarding when to request special items. Karen Kegley Justinen Deposition, p. 80, ll. 9-25, p. 81, ll. 1-4.

40. There is no evidence that the child or the foster care provider are provided information about the availability of the SSI and SSA payments to be expended, in their entirety if deemed in the best interest of the child, for extra items and special needs directly benefiting the child. As a result, some eligible children probably fail to request extra items for special needs.

41. There is no evidence that the representative payee makes any regular, systematic or uniform attempt, on a monthly basis or otherwise, to determine what "extra items" and/or "special needs" would directly benefit the children in State foster care before applying the SSA and SSI funds, in his control, to reimburse Children's Administration. Karen Kegley Justinen Deposition, p. 75, ll. 24-25, p. 76, ll. 1-11.

42. Of the 48 randomly selected individual trust fund accounts reviewed by plaintiff's counsel, 35 (or 73%) received SSI benefit payments, 11 (or 23%) received SSA benefit payments and 2 or 4% received both SSA and SSI.

43. Of the 35 children entitled to SSI benefits, the total amount of money received by the State was $596,378. The total amount used by the Trust Fund Unit to fund the State's foster care budget was $501,556 (or 84%). The total amount spent to directly benefit the child for extra items and special needs "account disbursements", was $19,534 (or 3%). See Plaintiff's Summary of Payments for 48 Random Cases, attached as Exhibit D.

44. Of the 11 children entitled to SSA benefits, the total amount of money received by the State was $98,152. The total amount used by the Trust Fund Unit to fund the State's foster care budget was $73,755 (or 75%). The total amount spent to directly benefit the child for extra items and special needs, "account disbursements," was $4,180 (or 5%).

45. Of the two children entitled to combined SSA and SSI benefits, the total amount of money received by the State was $91,422. The total amount used by the Trust Fund Unit to fund the State's foster care budget was $87,586 (or 95%). The total amount spent to directly benefit the child for extra items and special needs, "account disbursements," was $0 (0%).

46. Of all 48 accounts combined, the State received $785,952 in SSA and or SSI benefit funds on behalf of the children. To fund the State's foster care budget, the State reimbursed itself $662,897 (or 84%) from these same funds.

47. Of the 48 children for whom accounts were randomly selected, ten received "extra items and or special need" expenditures. This amounted to $23,714 (or 3%) of the total $785,952 in benefit payments received by the State.

48. The 48 random accounts show 3 of the 30 males received "account disbursements." Eleven of 18 females received $35,659 in "account disbursements."

49. The record does not fully explain why special benefits by way of "account disbursements" are not sought for some children.

50. Children in state foster care whose SSA and SSI benefits are paid to a representative payee other than the Secretary of DSHS can still receive state supported foster care maintenance. Tamara Erickson Deposition, p. 36, p. 37, ll. 1-8.

51. Foster children who do not receive any SSI or SSA benefits may qualify for extra items and special needs from

the total Foster Care Budget if funds are available. Tamara Erickson Deposition, p. 51, ll. 3-19.

52. The record does not establish the extent to which foster children who were not on SSI or SSA receive special need payments or extra item payments.

53. The Department's process for making a disbursement from SSI or SSA benefits for extra items or special needs starts when a Foster Parent and/or Children's Administration staff determine a child needs extra items or has any special needs. If so, Children's Administration staff submit a request for disbursement of funds to the Trust Fund Unit. Trust Fund staff review the request and if approved and the child has available funds, the Trust Fund Unit disburses the funds. Usually, a warrant is sent to the foster care provider made payable to a store or other service provider. However, occasionally warrants for extra items or special services are sent directly to the store or other service provider. If the staff is uncertain whether the request is an appropriate use of social security funds, the staff will consult with the Social Security Administration for approval. Affidavit of Karen Kegley Justinen, pp. 4-5, paras. 9-10. The record does not establish the existence of specific standards which direct foster parents or caseworkers when to apply for special needs or extra items.

54. Reimbursement is used by the Department to mean that it must expend the money up-front. The Department cannot claim federal funds back until the expenditure has already been made. In that sense, it is a reimbursement process, but only in the accounting sense.

55. Social Security Funds that are accounted for by the Trust Fund Unit and are not used for basic foster care costs, extra items, or special needs, are deposited into a collective

interest bearing savings account at a local bank. It is the policy of the Trust Fund Unit that the interest earned from this collective account is to be credited to each child's individual trust fund account on a monthly basis. These funds are ultimately forwarded to the child's successor payee, or paid directly to the child if emancipated. Affidavit of Karen Kegley Justinen, pp. 6-7, paras. 13-17.

Paragraph 2(d)(ii) of the Supreme Court's Order on Remand. ($2000. Limit)

56. A child receiving SSI benefits cannot have available resources over $2,000 and remain eligible for the monthly SSI benefit. (Funds deposited to the Dedicated Account are exempt from the $2,000 resource limit.) The Children's Administration maintains that it is its policy to ensure a child's trust fund account balance remains below the resource limit by reviewing every SSI account each month by Trust Fund staff to determine if the balance is approaching the resource limit. If the balance is nearing the resource limit, the Trust Fund Unit contacts Children's Administration staff notifying them of the need to spend down the child's account balance. The Children's Administration staff assess what special needs of the child could be met using the excess funds and request disbursement of funds from the Trust Fund Unit. If the request is an appropriate use of the child's Social Security benefits, the Trust Fund Unit disburses the funds. Affidavit of Karen Kegley Justinen, p. 5, para. 12; Affidavit of Tamara Erickson, p. 5, para. 10. Prior to October 1996, some accounts were spent down by reimbursing Children's Administration for previous basic care expenditures. None of the 48 randomly selected accounts demonstrated the spending down procedure after October 1996.

57. The State pays SSI payments to reimburse the Children's Administration as reimbursement for

reimbursable foster care expenses as a means of not exceeding the $2000 accumulation ceiling. Karen Kegley Justinen Deposition, p. 41, ll. 20-25; p. 42, ll. 1-18.

58. "Account sweeping" sometimes results in taking all the Social Security funds, which have accumulated to that date, and applying them to all of the State's accumulated reimbursable foster care expenses. For examples of "account sweeping" see accounts of Nacole Blimka, Case No. 4; Clark Casey, Case No. 9; Jasmine Cotton, Case No. 11; Jennifer Filbeck, Case No. 15; Clayton Gemoyla, Case No. 17; Rachel Hernandez, Case No. 21; Christopher Mulkins, Case No. 34; and others discussed in Plaintiffs' Narrative Summary of 48 Random Accounts. See Plaintiff's Narrative Summary of 48 Random Cases, attached as Exhibit E.

Paragraph 2(e) of the Supreme Court's Order on Remand.

59. Prior to applying to the Social Security Administration to serve as representative payee, the Children's Administration identifies all children in the foster care system who may have a significant mental or physical impairment that would make them eligible for SSI benefits. The Children's Administration also must apply on behalf of any child who is eligible for SSA benefits as required by 20 CFR 416.210. If Children's Administration staff believe the child may be eligible for SSI, the staff submits an application to the Social Security Administration. If Children's Administration staff believe a denial of eligibility is erroneous, they will appeal on behalf of the child. Affidavit of Tamara Erickson, pp. 4 and 5, para. 8.

60. The Children's Administration provides a number of services to all foster children regardless of whether they receive Social Security. Children's Administration staff are

responsible for monitoring a child's service needs, including food, clothing, shelter, therapy, child care (specialized or regular), special dietary needs, any special equipment the foster parent may need to care for the child, or any other special needs the child has through the child's case plan. Children's Administration is required to do an Individual Service and Safety plan for each child in foster care. This plan addresses the child's needs and where the child should live. This plan also addresses the child's permanent placement (either returning home to their parents (reunification) or another plan such as adoption or guardianship if reunification is not possible) and what the parents must do in order to achieve reunification. Affidavit of Tamara Erickson, p. 5, para. 9.

61. Children's Administration staff, along with Trust Fund Unit staff, are also responsible for maintaining the child's eligibility for SSI benefits by monitoring the amount of benefits available on a child's behalf. If resources are available beyond the monthly cost of foster care, staff may identify additional service needs and will purchase those services for the child. Affidavit of Tamara Erickson, p. 5, para. 10; Affidavit of Karen Kegley Justinen, p. 5, para. 12.

62. If the child's social worker identifies additional services or needs beyond basic food, clothing, and shelter, the social worker may recommend that the child's monthly social security benefits be used to pay for those needs or services in addition to, or instead of, basic foster care maintenance. The DSHS will give priority to the special needs when it is consistent with the social security regulations and when it is in the child's best interest. Affidavit of Tamara Erickson, p. 5, para. 11.

63. SSI financial redeterminations are completed by Children's Administration staff who interview the social

worker, child, foster parent, and/or guardian. Financial redeterminations are required by the Social Security Administration to determine continued income eligibility. There are several different types of redetermination forms used by the Social Security Administration depending on whether or not the child is flagged by the Social Security Administration as likely to have changes to their record, such as frequent moves and wages or other sources of income. Affidavit of Tamara Erickson, pp. 5 and 6, para. 12.

64. Children who receive SSI benefits are required by the Social Security Administration to have completed Continuing Disability Reviews (CDR). Children's Administration staff complete CDRs approximately every three years and then again just before the child turns 18. If a CDR is not completed, the child's SSI benefits are terminated by the Social Security Administration. Affidavit of Tamara Erickson, p. 6, para. 13.

65. Children's Administration staff report to the Social Security Administration any changes to the child's income that will affect the SSI payment amount or continuing SSI eligibility (i.e., wages, child support payments, etc.). For example, Children's Administration receives a list from the DSHS, Division of Child Support, which match children receiving an SSI benefit with those for whom the Division of Child Support received a child support payment. The Children's Administration has the obligation to report these child support collections to the Social Security Administration as income, which could lower the child's SSI benefits (not dollar for dollar). In the past, Children's Administration has not filed such reports. Staff also notify the Social Security Administration regarding changes in the circumstances of the child (change of address, change in custody, on the run, etc.).

66. Children's Administration staff complete the reports and forms required by the Social Security Administration for SSA benefits. For example, staff prepare Beneficiary Recontact Reports which track beneficiaries' marital status, and student statement forms which track school attendance for continued eligibility. Affidavit of Tamara Erickson, p. 6, para. 15.

67. Children's Administration staff also complete Disabled Adult Child (DAC) claims for those children receiving both SSA and SSI benefits or children receiving SSA who may be eligible for SSI. The Disabled Adult Child program allows a child, under certain circumstances, to receive benefits under SSA beyond their 18th birthday. Affidavit of Tamara Erickson, p. 6, para. 16.

68. Children's Administration staff assist 18-year-olds, parents, adoptive parents, foster parents, and/or guardians in accessing dedicated account funds. Affidavit of Tamara Erickson, p. 7, para. 17.

69. Children's Administration staff make necessary arrangements with the new custodian or the 18-year-old to facilitate reunification or emancipation. Some children would be unable to return home or live independently without a source of income. With proper planning between staff and the child or custodian, SSI eligibility may be preserved with benefits available after the child leaves foster care. If the child is eligible for SSA, staff advises the new custodian or the 18-year-old on how to apply to the Social Security Administration to become the new representative payee. Affidavit of Tamara Erickson, p. 7, para. 18.

70. Children's Administration staff also complete adoption support screenings for SSI eligible children. Children who are eligible for SSI are also eligible for medical

benefits under COBRA (Consolidated Omnibus Budget Reconciliation Act). This service is provided because families outside of Washington State adopt some children, or the adoptive family may move to another state. COBRA allows reciprocal medical coverage in other states that may not be available otherwise. Affidavit of Tamara Erickson, p. 7, para. 19.

71. The Trust Fund Unit also monitors the amount of monthly payment received for the child to ensure the correct benefit amount is received from the Social Security Administration, and monitors the amount of dedicated installment payments deposited by the Social Security Administration directly into the child's dedicated account, to ensure the correct retroactive benefit amount is received. Affidavit of Karen Kegley Justinen, p. 6, para. 13.

72. Trust Fund Unit staff also communicate with the Social Security Administration to resolve any discrepancies regarding benefits due, overpayment amounts, etc. The Trust Fund Unit will refund, to the Social Security Administration, benefits for which the child is not entitled to. Affidavit of Karen Kegley Justinen, p. 6, para. 14.

73. The Trust Fund Unit staff also comply with strict reporting and accounting requirements. The Trust Fund Unit reports to the Social Security Administration if balances exceed the SSI resource limit of $2000; submits annual accountings for each child to the Social Security Administration (reporting on benefits received, used, and conserved); and submits additional account information to the Social Security Administration (interest earned, account balances, etc.) as requested. The Trust Fund Unit maintains complete and individual records of each child's account for auditing purposes. Affidavit of Karen Kegley Justinen, p. 6, para. 15.

74. The Trust Fund Unit forwards a child's remaining balance or unused benefits to either the Social Security Administration or the new payee when the Social Security Administration appoints a new representative payee. Affidavit of Karen Kegley Justinen, p. 6, para. 16.

Paragraph 2(f) of the Supreme Court's Order on Remand.

75. The actual number of class members is not determinable from records available to DSHS. Based on records available, there are up to 7,798 class members dating back to July of 1991. Affidavit of Karen Kegley Justinen, p. 7, para. 19.

76. According to the Trust Fund Handbook, there are approximately 2,000 children in State care with a trust fund account. The State claims its records are available back to 1991. Karen Kegley Justinen Deposition, Exhibit "5" Trust Fund Handbook, Sec. 1.

The claims of the class extend back 18 years plus one year for a total of 19 years back from the date of the filing of plaintiffs' action, i.e., to 1979.

Additional Findings of Fact to Assist the Court

77. The Department of Social and Health Services admits that its divisions fail to communicate adequately with regard to the accounting for and crediting of child support payments made on behalf of foster children who are also receiving SSA/SSI benefits. Karen Kegley Justinen Deposition, 50, ll. 23-25; p. 51, ll. 1-4; p. 54, ll. 20-25, Exhibit 3; p. 55, ll. 1-9.

78. When child support is collected, the portion denominated as "current support" is used to offset "current reimbursable foster care expenses." Child support identified as "Back Support" is used to repay accumulated reimbursable foster care expenses. The excess of current support over reimbursable foster care expenses is sent to the Trust Fund Unit as excess child support. Affidavit of Alan Rhoten, p. 3, para. 5.

79. The State's system does not report to the Foster Care Trust Fund Unit that it has used parental support to pay for all or a part of "current reimbursable foster care expenses." Alan Rhoten Deposition, p. 38, ll. 5-21.

80. In those months when child support is received from a parent of a child in state foster care who is also receiving SSA and or SSI benefit payments, the child's' trust account is not credited to the child's subsidiary" trust accounting record. Karen Kegley Justinen Deposition, p. 55, ll. 9-25; p. 57; p. 58, ll. 1-19.

81. The head of the Trust Fund Unit has known, since at least 1994, because of the failure of the Trust Fund Unit to communicate with the Division of Children's Services, that it potentially reimburses itself twice for the same months foster care expenses, once through use of the foster child's SSA and SSI money and once from parental support payments. Karen Kegley Justinen Deposition, p. 16; p. 17, ll. 1-19, Exhibit 3.

82. The State may experience a double payment when it "sweeps" the children's trust fund account to repay reimbursable foster care expenses which have accumulated from prior months where child support has already been paid. For examples of such sweeping, see accounts of Nacole Blimka, Case No. 4; Clark Casey, Case No. 9; Jasmine Cotton, Case No. 11; Jennifer Filbeck, Case No. 15; Clayton

Gemoyla, Case No. 17; Rachel Hernandez, Case No. 21; Christopher Mulkins, Case No. 34; and others discussed in Plaintiffs' Narrative Summary of 48 Random Accounts.

83. To date, the State's system has not been corrected to eliminate this potential problem for double payment.. Karen Kegley Justinen Deposition, p. 17, ll. 20-24, Exhibit 3.

84. The potential significance of this problem is highlighted by the fact that the State forecasts collecting approximately $3.25 million for FY2000 in child support for children in foster care. See the Budget Forecasting Document from the Tamara Erickson Deposition, attached hereto as Exhibit B.

85. The source of funds for the Children's Administration's total foster care budget for FY2000 is $37,407,045 State Only, $9,317,124 Title IV-E, $3,579,000 TANF, and $3,579 Title XIX. See Source of Funds for Foster Care Budget, attached as Exhibit F.

86. Most children in foster care qualify for Title IV-E and/or TANF funding while awaiting a determination of SSI/SSA benefits.

87. Following a determination of Social Security eligibility, the State representative payee will receive a lump sum payment for prior months' eligibility.

88. Under the TANF Program, federal funding is provided directly to the State to reimburse 100% of its reimbursable foster care costs. Affidavit of Tamara Erickson, pp. 31-33. Federal funding is also provided under Title IV-E to reimburse a percentage of foster care costs. Applications were made in some of the 48 random cases under both programs for children in foster care receiving SSI

and SSA. Eligibility requirements and funding availability are such that the state does not apply for federal funding for all children, neither does the state apply for federal funding for all of a child's costs. The State argues that its accounting system is such that overpayments do not occur since the federal share of foster care costs, collected from the foster child's trust fund account are passed through to the federal government. The record does not establish this point or rule it out.

89. Currently there are 567 Developmentally Disabled children or qualifying young adults in Foster Care. Three hundred three of them are entitled to receive Social Security benefits. Linda Gil Deposition, p. 13, ll. 7-12.

90. The children with developmental disabilities were transferred from the regular Foster Care Program, administered by Children's Services, into the Developmental Disabilities Foster Care Program, administered by the Department of Developmental Disabilities in July of 1998. Affidavit of Linda Gil, p. 2, para. 5.

91. The transfer involved an Interagency Agreement, which agreement contains a provision of unresolved issues by a committee, identified in the agreement. Among the unresolved issues were the responsibilities of the DSHS Trust Fund Unit.

92. DSHS served as representative payee for the Developmentally Disabled children until July 1999. Affidavit of Linda Gil, p. 2, para. 4. The Developmentally Disabled Foster Care children were thus a part of the plaintiff class when the Court entered its Order on January 5, 1996.

93. The Secretary of Washington State DSHS no longer serves as representative payee for foster children with

Developmental Disabilities. Instead, various private agencies such as the ARC of King County and the ARC of Spokane now serve as representative payee. Linda Gil Deposition, p. 30, ll. 11-13.

94. The aforesaid institutional Private Representative payees administer the Social Security benefits of the developmentally disabled foster care children by paying the benefits directly to the foster home. The State then pays any difference between the cost of foster care and the Social Security benefit. Affidavit of Linda Gil, p. 4, paras. 9-10.

95. In this way, the State's foster care payment for Developmentally Disabled Foster Children is reduced by the amount of their Social Security Benefit.

96. The State relies on the representative payee to pay all SSI payments directly to the foster home. The record does not establish that the State controls the decisions made by representative payees in disposition of SSI/SSA funds. Linda Gil Deposition, p. 32, ll. 16-20.

97. The Parents of the Developmentally Disabled Foster Children are Required to Sign a Voluntary Placement Agreement (VPA) which Provides in Part:

> Parent/Guardian Agrees:
>
> I voluntarily agree that the above named child be placed in the care and under the supervision of DSHS. I authorize DSHS to carry out the duties and responsibilities as described later in this agreement. DSHS is further authorized to apply as a Representative Payee for any benefits the child is eligible to receive, and to use the fund to cover the cost of care and services provided to the child. (Our emphasis)

98. It appears that developmentally disabled children do not have SSI or SSA funds available for "special needs", "extra items" or savings.

DATED this 30th day of May, 2000.

//s//
JUDGE JACK BURCHARD

Approved as to form only:

CHIRISTINE O. GREGOIRE
Attorney General

//s//
L. SCOTT LOCKWOOD
WSBA No. 19248
Assistant Attorney General
Attorney for Defendants

Approved for presentation by:

RODNEY M. REINBOLD
WSBA No. 4656
Co-Counsel for Plaintiffs

RICHARD B. PRICE
WSBA No. 3203
Co-Counsel for Plaintiffs

[ATTORNEY GENERAL LETTERHEAD]

December 29, 1900

The Honorable Jack Burchard
Okanogan County Superior Court
149 Third N.
P.O. Box 112
Okanogan, WA 98840-0112

RE: Keffeler v. State of Washington, DSHS, et al.
Superior Court Cause No. 92-2-00157-2
Supreme Court Cause No. 67680-1

Dear Judge Burchard:

I represent the Department of Social and Health Services in the above matter. As the court ordered in its Scheduling Order on Proceedings on Remand from Supreme Court, enclosed please find a copy of the August 1998 audit by the Social Security Administration of the Department of Social and Health Services referred to at page 7 of the amicus curiae brief of the Commissioner of the United States Social Security Administration. The Social Security Administration will be submitting a declaration in support of this audit report by January 15, 2000.

Should you have any questions, please feel free to contact me at (360) 459-6949.

Sincerely,

//s//
Debra E. Casparian

Assistant Attorney General
Social & Health Services Division
(360) 459-6949

DEC:lan
Enc.

cc: Deborah Kant, Appellate Staff, Department of Justice
Victoria Blais, General Counsel, Social Security Administration
Rodney Reinbold, Attorney at Law
Richard Price, Attorney at Law

DECLARATION OF KEVIN MCCAHILL

I, Kevin McCahill, declare as follows:

1. I am an employee of the Social Security Administration, Office of Program Benefits, Division of Representative Payment and Evaluation (DRPE).

2. I traveled with Ed Fotheringill and other DRPE central office staff members to Seattle the week of August 24, 1998 to August 28, 1998 to conduct onsite reviews of the Washington State Department of Social and Health Services (DSHS) and other organizational payees.

3. Mr. Fotheringill prepared the attached trip report on September 28, 1998.

4. Mr. Fotheringill is no longer employed at the Social Security Administration.

5. I have read Mr. Fotheringill's trip report and believe that it accurately depicts DRPE's onsite review of DSHS and the opinions DRPE formed about DSHS during the onsite review.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

//s//

Kevin McCahill
Senior Policy Analyst
Office Program Benefits
Division of Representative
Payment and Evaluation

DRPE TRIP REPORT – SEATTLE 1998

DRPE Central Office Staff traveled to Seattle the week of 8/24-8/28/98 to conduct onsite reviews of three different types of organizational payees: (1) a State mental facility (Western State Hospital); (2) the Department of Social and Health Services (DSHS); and (3) a fee-for-service organization (Safety Net Services).

The fundamental purpose of the onsite reviews was three-fold: (1) to gain a better understanding of how different kinds of organizational payees operate; (2) to determine the organizations' strengths and weaknesses in the context of payee performance; and (3) to encourage an open, responsive line of communication between the organizations and the parallel field offices.

DRPE staff was represented by Kevin McCahill, Pat Gregus, Ray Hairston, and Ed Fotheringill. Seattle RO staff was represented by Ila Andrews.

It is not the intention of this report to document, in detail, all that transpired during the field reviews. Rather, the intention is to give an over-view of some of the more noteworthy insights gained from our discussions. Detailed information will be made available upon any verbal de-briefing deemed necessary.

<u>Wednesday 8/26</u>

Onsite Review of The Department of Social and Health Services (DSHS), Olympia, WA:

The review methodology was four-fold:

1. A discussion with DSHS administrators and staff on rep payee duties and responsibilities;

2. A review of a sample of accounting records;

3. A discussion with case workers and SSI facilitaters;

4. A close-out session to discuss findings and make recommendations for corrective action.

The DSHS for the State of Washington is a model agency that could stand as a prototype for effective organizational payeeship. There is excellent communication both within and between each DSHS component, as well as between the DSHS and the parallel FO.

The foster care section provides a broad range of care and maintenance, including emergency placements, family conflict issues, child welfare services, psychological services for both children and their parents, alcohol and drug rehabilitation, etc. The key to the practical functioning of the foster care section lies in the in-tandem work process involving SSI facilitators (social workers who take the SSI applications and handle all paperwork, money transactions, and interaction with the FO) and case workers (social workers who do all of the hands-on management of foster care situations in the field). The SSI facilitators and case workers are in constant communication and actually provide a kind of check-and-balance function that is extremely effective.

The accounting system is two dimensional: (1) there is an automated record reflecting monies coming in and going out;

and (2) a paper file, held by the case worker, showing the entire paper tail for the case, including documentation of expenditures. The separation of automated and paper records makes an audit quite cumbersome, but when the files are brought together with the automated records, the system reflects accurate and responsible accounting. The only recommendation for corrective action involved the posting of interest to a few cases that had gone unrecognized.

The DSHS brought to our attention one issue that they believe impedes inter-agency work effectiveness: FO management is constantly rotating staff assignments and responsibilities, making it difficult for DSHS and SSA to have a liaison that can gain any momentum. As soon as the the [sic] interagency relationship becomes comfortable and effective, the FO manager rotates a new (and inexperienced) person into the job. The current SSA Claims Rep wants to stay in the liaison position, but is scheduled to rotate out shortly. We basically left this in Ila's hands.

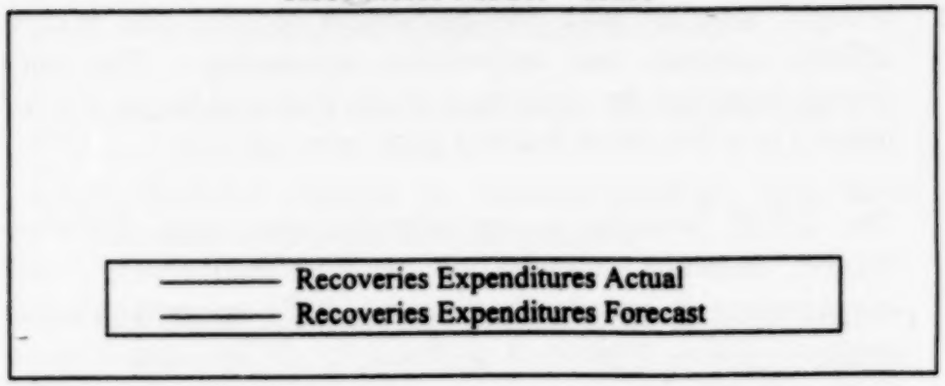
Brief meeting with Colleen St. Louis at the RO at Columbia Tower:

Ed briefed Colleen on all that transpired at DSHS. Colleen ---unreadable--- (and relieved) that the inter-agency work . . .

Exhibit B

Forecast 11/98 for 99-01 budget [handwritten]

Recoveries Model Values



Date	Recoveries	Date	Recoveries
Jul-97	-$742,357	Jul-99	-$755,835
Aug-97	-$734,409	Aug-99	-$755,164
Sep-97	-$724,047	Sep-99	-$754,493
Oct-97	-$728,563	Oct-99	-$753,822
Nov-97	-$740,867	Nov-99	-$753,152
Dec-97	-$738,170	Dec-99	-$752,481
Jan-98	-$749,654	Jan-00	-$751,810
Feb-98	-$752,263	Feb-00	-$751,140
Mar-98	-$758,971	Mar-00	-$750,469
Apr-98	-$760,149	Apr-00	-$749,798
May-98	-$765,224	May-00	-$749,128
Jun-98	-$764,554	Jun-00	-$748,457
Jul-98	-$763,883	Jul-00	-$747,786
Aug-98	-$763,212	Aug-00	-$747,116
Sep-98	-$762,542	Sep-00	-$746,445
Oct-98	-$761,871	Oct-00	-$745,774
Nov-98	-$761,200	Nov-00	-$745,103
Dec-98	-$760,529	Dec-00	-$744,433

Exhibit B

Jan-99	-$759,859	Jan-01	-$743,762
Feb-99	-$759,188	Feb-01	-$743,091
Mar-99	-$758,517	Mar-01	-$742,421
Apr-99	-$757,847	Apr-01	-$741,750
May-99	-$757,176	May-01	-$741,079
Jun-99	-$756,505	Jun-01	-$740,409

FY 98	-$8,959,228	FY 00	-$9,025,749
FY 99	-$9,122,329	FY 01	-$8,929,169

97-99 Bi.	-18,081,557	99-01 Bi.	-17,954,918

Exhibit B

RM 1000.xls
This shows how foster care is spread to programs by the forecast.
The allotment distribution of foster care by month is shown on pages 15 and 16.

Regions Allotment FY00		Allotment	Balance	Region 1	Region 2
Family Foster Care	A1910	51,614,991	51,614,991	6,593,302	5,728,994
Personal Care	A1920	1,302,292	1,302,292	174,096	151,274
Group Care	A193x, 4x, 9x	42,777,015	42,777,015	5,718,610	4,968,964
Staff Secure GH	A1996	1,050,600	1,050,600	140,449	122,037
Receiving Homes	A1950	4,331,660	4,331,660	579,075	503,164
Misc. FC					
Employ. FPCC	A1964	8,606,758	8,606,758	1,150,587	999,768
FH Recruit.	A1965	447 000	447,000	26,068	22,651
FC Liaisons	A1966	252,000	252,000	0	0
Passport Prog.	A1967	2,052,240	2,052,240	268,005	234,327
Intensive FC Assess	A1968	1,604,000	1,604,000		
Adopt Home Study	A1969	0	0		
FP Suprv.Visit	A1971	1,145,154	1,145,154	150,588	131,006
FP Training	A1972	1,190,690	1,190,690		
Reimburs.	A1973	467,392	467,392		
FP Supp.–DLR	A1976	100,000	100,000		
Other Services	A1961-78	14,112,257	14,112,257	1,864,486	1,618,461
Total Misc.	A1960-70	29,977,491	29,977,491	3,459,734	3,006,203
FC Recoveries					
Support Enfor.	A1981-2	(3,250,890)	(3,250,890)	0	0
SSI/SSA	A1983	(6,733,676)	(6,733,676)	(900,185)	(782,182)
Total Recov.	A1980	(9,984,566)	(9,984,566)	(900,185)	(782,182)

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ	
7,228,942	13,788,037	7,445,418	8,535,298	2,295,000	
190,880	364,072	196,598	225,374	0	
6,269,923	11,958,864	6,457,681	7,402,973	0	
153,989	293,709	158,600	181,816	0	
634,901	1,210,971	653,914	749,635	0	
1,261,512	2,406,130	1,299,289	1,489,482	0	
28,582	54,515	29,437	33,747	252,000	
0	0	0	0	252,000	
308,739	500,920	340,601	363,994	35,654	
				1,604,000	
176,697	301,290	185,057	200,518	0	
				1,190,690	1,190,690
				467,392	467,392
				100,000	
2,017,747	3,972,208	2,052,486	2,391,029	195,840	
3,793,277	7,235,063	3,906,870	4,478,788	4,097,576	
0	0	0	0	(3,250,890)	
(986,970)	(1,882,486)	(1,016,526)	(1,165,327)	0	
(986,970)	(1,882,486)	(1,016,526)	(1,165,327)	(3,250,890)	

Exhibit B

Regions Allotment FY00		Allotment	Balance	Region 1	Region 2
Total Foster Care	A1900	121,669,483	121,069,483	15,765,081	13,698,454

Forecast Months FY00					
Total	July	August	September	October	November
1.00000	0.07994	0.08194	0.08211	0.08217	0.08180

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ
17,284,942	32,968,230	17,802,553	20,408,537	3,141,686

December	January	February	March	April	May	June
0.08226	0.08227	0.08293	0.08563	0.08547	0.08591	0.08753

Exhibit B

RM 1000.xls
This shows how foster care is spread to programs by the forecast.
The allotment distribution of foster care by month is shown on pages 15 and 16.

Regions Allotment FY01		Allotment	Balance	Region 1	Region 2
Family Foster Care	A1910	54,998,907	54,998,907	7,039,542	6,116,737
Personal Care	A1920	1,164,561	1,164,561	155,682	135,276
Group Care	A193x, 4x, 9x	46,527,545	46,527,545	6,210,994	5,404,625
Staff Secure GH	A1996	1,071,612	1,071,612	143,257	124,478
Receiving Homes	A1950	4,485,574	4,485,574	599,649	521,043
Misc. FC					
Employ. FPCC	A1964	9,967,152	9,967,152	1,332,451	1,157,781
FH Recruit.	A1965	447,000	447,000	26,088	22,651
FC Liaisons	A1966	252,000	252,000	0	0
Passport Prog.	A1967	2,093,285	2,093,285	273,365	239,014
Intensive FC Assess	A1968	1,604,000	1,604,000		
Adopt Home Study	A1969		0		
FP Suprv.Visit	A1971	1,168,057	1,168,057	153,599	133,626
FP Training	A1972	1,215,344	1,215,344		
Reimburs.	A1973	468,392	468,392		
FP Supp.–DLR	A1976	100,000	100,000		
Other Services	A1961-78	17,032,449	17,032,449	2,254,428	1,957,252
Total Misc.	A1960-70	34,347,679	34,347,679	4,039,911	3,510,324
FC Recoveries					
Support Enfor.	A1981-2	(3,284,372)	(3,284,372)	0	0
SSI/SSA	A1983	(6,661,623)	(6,661,623)	(890,554)	(773,812)
Total Recov.	A1980	(9,945,995)	(9,945,995)	(890,554)	(773,812)

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ	
7,718,202	14,721,222	7,949,330	9,112,974	2,340,900	
170,691	325,568	175,805	201,539	0	
8,819,647	19,007,373	7,023,867	8,052,039	0	
157,069	299,583	161,772	185,453	0	
657,461	1,254,000	677,149	776,272	0	
1,460,908	2,788,445	1,504,658	1,724,911	0	
28,582	54,515	29,437	33,747	252,000	
0	0	0	0	252,000	
314,914	510,938	347,413	371,274	36,367	
				1,604,000	
				0	
180,231	307,316	188,758	204,527	0	
				1,215,344	1,215,344
				468,392	468,392
				100,000	
2,444,752	4,789,125	2,491,764	2,895,371	199,757	
4,429,387	8,448,339	4,582,028	5,229,830	4,127,860	
0	0	0	0	(3,284,372)	
(976,409)	(1,862,342)	(1,005,648)	(1,152,858)	0	
(976,409)	(1,862,342)	(1,005,648)	(1,152,858)	(3,284,372)	

Exhibit B

Regions Allotment FY00		Allotment	Balance	Region 1	Region 2
Total Foster Care	A1900	132,649,883	132,649,883	17,307,481	15,038,671

Forecast Months FY00					
Total	July	August	September	October	November
1.00000	0.07931	0.08166	0.08190	0.08175	0.08137

Allotment Methodology FY00-01			
Total	100.00%	13.3684%	11.6160%

Exhibit B

Region 3	Region 4	Region 5	Region 6	HQ
18,976,048	36,193,743	19,544,303	22,405,249	3,184,388

December	January	February	March	April	May	June
0.08185	0.08209	0.08279	0.08592	0.08598	0.08694	0.08844

14.6572%	27.9563%	15.0961%	17.3050%

Family Foster Care Rates
June 3, 1999

Family Foster Care Service	July 1, 1996	July 1, 1998 3%	July 1, 1997 12.50 to R&B	July 1, 1998 12.50 to R&B	July 1, 1999 2%	July 1, 2000 2%
Room & Board (R&B)						
0 to 5 years	221.65	228.30	240.80	253.30	258.37	263.53
6 to 11 years	287.95	296.59	309.09	321.59	328.02	334.58
12 & older	345.90	356.28	368.78	381.28	388.91	396.68
Clothing Allowance						
0 to 11 years	34.65	35.69	35.69	35.69	36.40	37.13
12 & older	41.19	42.43	42.43	42.43	43.28	44.14
Personal Incidentals Allowance						
0 to 5	47.26	48.68	48.68	48.68	49.65	50.65
6 to 11	51.42	52.96	52.96	52.96	54.02	55.10
12 & older	55.17	56.83	56.83	56.83	57.97	59.13
Foster Care Spcial Rate—Up to	141.85	146.11	146.11	146.11	149.03	152.01
TOTAL						
0 to 5 YEARS	303.56	312.67	325.17	337.67	344.42	351.31
6 TO 11 YEARS	374.02	385.24	397.74	410.24	418.44	426.81
12 & OLDER	442.26	455.54	468.04	480.54	490.15	499.95

This page intentionally left blank.

Exhibit D

Page 1		Payments Received	Interest Earned	Payments Returned	
Galee Anderson	SSI	$ 24,243	$0	$ 2,919	
Thomas Bakkon	SSI	$ 28,418	$0	$ 1,501	
Angeline Behrent	SSA	$ 19,418	$0	$ 1,158	
Nacole Blimka	SSI	$ 10,916	$0	$ 3,003	
Alisha Breaux	SSI	$ 9,531	$6	$ 953	
Jamie Brundage	SSI	$ 12,279	$0	$ 733	
Rene Calcagno	SSI	$ 16,026	$0	$ 998	
Johnathan Cathey	SSI	$ 1,886	$0	$ 195	
Miracle Combs	SSA	$ 6,856	$23	$ 0	
Jasmine Cotton	SSI	$ 23,362	$0	$ 0	
James Davis	SSA	$ 2,346	$0	$ 0	
William III Dipert	SSI	$ 2,193	$0	$ 1,318	
Latasha Enochs	SSI	$ 20,550	$62	$ 1,388	(1)
Jennifer Filbeck	SSI/ SSA	$ 49, 597	$75	$ 3,241	(1)
Monique Frazier	SSI	$ 22,025	$56	$ 1,357 356.70 (IV-E Cost of Care) 1001.10	(1) (1) (1)
Clayton Gemoyla	SSI	$ 25,778	$0	$ 1,042	(1)
Robert Graves	SSA	$ 3,535	$28	$ 779	(1)

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 0		$ 21,323
$ 0		$ 26,917
$ 1,296	Transferred to New Rep. Payee	$ 16,964
$ 0		$ 7,912
$ 0		$ 8,584
$ 0		$ 11,545
$ 0		$ 15,028
$ 0		$ 1,691
$ 1,189	Transferred to New Rep. Payee	$ 5,691
$ 0		$ 23,362
$ 0		$ 2,346
$ 0		$ 874
$ 1,232 74.78 550.00 200.00 208.00 200.00	Breakdown: camp computer clothes* skating party clothes* *double billing	$ 17,990
$ 123	overpayment	$ 46,308
$ 3,768 670.00 400.00 960.00 500.00 1200.00	Breakdown: computer bicycle, toys, clothing jacket, shoes Ankle/foot orthosis & collapsable stroller resting splint Trip to Disneyland	$ 16,954
$ 0		$ 24,736
$ 1,040 115.00 825.00 20.00 20.00 20.00 20.00 20.00	Breakdown: insur. premium ? Therapy 4/97 Therapy 4/97 Therapy 4/97 Therapy 4/97 Therapy 8/97	$ 1,743

Exhibit D

Page 2

		Payments Received	Interest Earned	Payments Returned	
Anthony Hallett	SSI	$ 17,757	$0	$ 2,273 "Because of help, he got to pay cost of his food, clothing and shelter"?	(1)
Rachel Hernandez	SSI	$ 11,914	$0	$ 3,009 "Because her assistance, payments based on need (1"4-E")"?	(1)
Kyle Hontz	SSA	$ 143	$0	$ 0	
Danetta Hutchinson	SSI	$ 34,302	$108	$ 3,547 ($2,370 returned because balance was over the resource limit)	
Douglas Johns	SSI	$ 114	$0	$ 114	
Richard Jones	SSI	$ 2,007	$0	$ 1,016	
Dustin King	SSA	$ 3,682	$0	$ 0	
Tracy Lacourse	SSI	$ 4,900	$0	$ 3,550	
Scott Lemiere	SSI	$ 38,194	$0	$ 7,281	(1)
Zachery Lucas	SSA	$ 1,665	$0	$ 0	
Sam Manning, Jr.	SSI	$ 13,934	$0	$ 3,003 Due to adopting	(1)
Kyra Mitchell	SSA	$ 1,576	$0	$ 68	
Christopher Mulkins	SSI	$ 26,840	$8	$ 2,854	(1)
Sarah Nelson	SSI	$ 3,503	$0	$ 0	

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 0		$ 15,483
$ 0		$ 8,904
$ 0		$ 143
$ 7,604	Breakdown: 1,604 development toys, riding lessons, copier, clothing 1,500 computer 1,492 swingset 1,636 Big Toy* 250 Big Toy 1,122 Furnitue & computer *Told care worker only 200 available	$ 23,258
$ 0		$ 0
$ 990	Erroneous acct. – child got nothing	$ 0
$ 0		$ 3,682
$ 0		$ 1,350
$ 0		$ 30,913
$ 333	Transferred to New Rep. Payee	$ 1,332
$ 0		$ 10,930
$ 0		$ 1,508
$ 324	"For care"?	$ 23,669
$ 2,752	Guardianship Fees $750 balance to father for time child with him, but State continued to pay Foster Care Support! (3)	$ 751

Exhibit D

Page 3

		Payments Received	Interest Earned	Payments Returned	
Marcel Paul	SSI	$ 27,031	$0	$ 384	
Samantha Maurath	SSA	$ 22,692	$152	$ 0	
Alyssa McLennan	SSI	$ 14,497	$66	$ 527	(1)
Ryan O'Connor	SSI	$ 28,266	$0	$ 2,589	(1)
Brandon Phillips	SSI	$ 14,925	$22	$ 6,305 In jail, so SSI took money back	(1)
Elbert Pruett	SSI	$ 2,401	$0	$ 226	
Justin Reynolds	SSI	$ 13,791	$0	$ 224	(1)
Joseph Rogers	SSI	$ 12,036	$0	$ 1,474	(1)
Jasmine Saetern	SSI	$ 4,397	$0	$ 1,404	(1)
Justin Scherer	SSI	$ 24,078	$54	$ 1,206	(1)
Leah Shay	SSI	$ 40	$0	$ 40	
Denita Smith	SSA	$ 5,977	$0	$ 610	(1)
Daniel Stephenson	SSI	$ 38,662	$0	$ 1,001	

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 0		$ 26,647
$ 5,515	Transferred to New Rep. Payee	$ 17,329
$ 4,584	Breakdown: 2,000 Bedroom set 328 Preschool 400 Daycare 700 Rocking chair, computer, clothing, educational toys 365 Daycare	$ 9,453
$ 500	"I am requesting DCFS forego reimbursement in final month to provide child with transitional expenses he is incurring." (Why not all children?)	$ 25,176
$ 0		$ 8,642
$ 0		$ 2,175
$ 1,519	New Trustee	$ 12,047
$ 0		$ 10,562
$ 11	"After reimbursing for all care thru 2/97 there is a remaining account balance of $11.91."	$ 2,980
$ 2,225	Breakdown: 913 part payment on piano for brothers 1,312 for one-half of beds for brothers	$ 20,700
$ 0		$ 0
$ 1,838	Breakdown: 614 for transition rent & damage deposit 1,224 for rent & utilities	$ 3,529
$ 0		$ 37,621 (1992-1997)

Exhibit D

Page 4		Payments Received	Interest Earned	Payments Returned	
Jacob Taylor	SSA /SSI	$ 41,825	$0	$ 0	
Amanda Tulowetzke	SSA	$ 30,262	$526	$ 0	(1)
Jay Warden	SSI	$ 44,186	$0	$ 605	(1)
Wiley Anitra	SSI	$ 21,436	$0	$ 5,638	(1)
		$ 785,952	$ 1,186	$ 69,533	

(1) over payment
(2) See TRUST FUND HANDBOOK Section 3 Account Disbursements (Dep. Justinen, Ex. 5)
(3) Smoking Gun
(4) Includes only amounts actually paid for direct benefit to children (i.e., small print)

Exhibit D

Account Disbursements	(2) Extra items & special needs	Foster Care Reimbursements
$ 547	New Trustee	$ 41,278 (1991-1997)
$ 11,300	Breakdown: 9,197 transferred to Amanda following Court ordered decree of Emancipation DSHS denied $127.50 dental care bill? See letter of Sharon Morrison! 377 School clothes/supplies 875 Alternative school 200 School clothes 200 School clothes 300 Clothing 100 Clothing	$ 19,488
$ 0		$ 42,580 (1991-1999)
$ 5,999	Breakdown: "All but $450 (clothing, learning aids & educational toys went to New Rep. Payee	$ 9,799
$ 23,714 (4)		$ 662,897

Keffeler

Plaintiff's Narrative Summary of
48 Random Cases

Date: March 9, 2000

Case No. 1: Calee Anderson

Comments: 15 year old girl, who was in foster care from 1993 until 1997. No Special needs account disbursement was ever made on her behalf.

Account Disbursements: -0-
State Received: $21,323.82 of foster care reimbursement

Case No. 2: Thomas Bakkon

Comments: This 12 year old in [sic] was in foster care for 5 years (recorded). No Special needs account disbursement was ever made on her [sic] behalf.

Account Disbursements: -0-
State Received: $26,917.31 of foster care reimbursement

Case No. 4: Nacole Blimka

Comments: Nacole also received no disbursements. The account was swept on 8/5/97 when the State reimbursed itself

$1,966.20 for foster care previously provided. Account again swept on 10/15/97 for $983.00 of previously provided foster care expenses. Nacole's case demonstrates that the State does not pass benefits through to children but, instead, repays itself for services already provided.

Account Disbursements: -0-
State Received: $7,912.70 of foster care reimbursement

Case No. 9: Clark Casey

Comments: This is another illustration of account sweeping. On a single day in 1995, the State reimbursed itself $2,233 for foster care provided in the months of May, June, July, August, September and October of 1994. No Special needs account disbursement was ever made on Casesy's [sic] behalf.

Account Disbursements: -0-
State Received: $2,233.00

Case No. 11: Jasime Cotton

Comments: This case illustrates that the payment was not a pass-through payment but a reimbursement. On 5/8/96, Cotton received $11,676.29 of social security payments, likely lump sum social security award. The account was diminished on 12/2/96 from $12,171.00 to $495.42. The State thus repaid foster care

expenses of $11,696.00 dating back to 4/94. She received no account disbursements in hers [sic] 3 years of foster care.

Account Disbursements: -0-
State Received: $23,362.37

Case No. 12: Latasha Enochs

Comments: Enochs received $200 for clothing with some regularity to keep her account balance below $2,000. She was also sent to camp, and received a computer and had a savings account.

Account Disbursements: $1,232
State Received: $20,550

Case No. 15: Jennifer Filbeck

Comments: Jennifer was in foster care for 9 years. Caseworker identified no special needs until last day of care when Jennifer received $123.20. The case also illustrates that the State repays itself foster care rather than passing the benefits through to the children. In July, 1989, the State repaid the cost of foster care for August, October, November and December, 1988; and May, 1989. It also illustrates the State's savings policy. For instance, the State on 8/30/89 transferred $300.00 to savings but withdrew from savings on 12/4/89 $115.40 to repay its cost of foster care having previously diminished the account

balance by foster care reimbursements to itself.

Account Disbursements: $123.20
State Received: $46,308.63 for foster care reimbursement

Case No. 16: Monique Frazier

Comments: Monique Frazier received $3,768.73 of account disbursements. In March of 1995, she went to Disneyland; in April of 1995, she received an ankle splint; in July of 1995, she received a stroller; and in March of 1997, she received a computer, all in the category of special needs.

Account Disbursements: $3,768.73
State Received: $16,954.99 for foster care reimbursement

Case No. 17 : Clayton Gemoyla

Comments: On 9/18/96, Clayton received $14,485.19, likely the lump sum payment. $13,989.77 was then paid to the State. The State received $25,778.17 and the boy received nothing in his 2 years in foster care.

Account Disbursements: -0-
State Received: $24,736.17 for foster care reimbursement

Case No. 21: Rachel Hernandez

Comments: State reimbursed itself $1,966.20 on 6/18/97 to repay for services previously rendered. Another illustration of account sweeping and illustrates that the state's reimbursement program is repayment of past debt and not pass through.

Account Disbursements: -0-
State Received: $8,904.80 for foster care reimbursement

Case No. 23: Danetta Hutchinson

Comments: Danetta received $7,604.60 of special disbursements including a $1,600 big toy. The price of the big toy exceeded her foster care balance and the foster care program reimbursed the remainder. She also received a computer, toys, riding lessons, a copier, clothing, and a savings account. State paid itself $23,258.40 compared to Danetta's $7,604.60. Danetta received 33% of her social security check back in special benefits.

Account Disbursements: $7,604.60
State Received: $23,258.40 for foster care reimbursement

Case No. 32 : Alyssa McLennan

Comments: Alyssa received a rocking chair, a keyboard, a clothing allowance, and

education toys totaling $4,584.26. The State repaid itself $9,453.46. Here the caseworker managed to provide 50% of the benefit to meet special needs.

Account Disbursements: $4,584.26
State Received: $9,453.46 for foster care reimbursement

Case No. 34: Christopher Mulkins

Comments: The State reimbursed itself $23,669.88. Chris received special disbursements of only $324.00. The State swept the account on 2/2/96 collecting a little over $1,500 to repay itself foster care it had provided on 8/95, 9/95 and 12/95. In this young man's case, the State chose the sweep method to keep the account below $2,000.

Account Disbursements: $324.00
State Received: $23,669.88 for foster care reimbursement

Case No. 36: Ryan O'Connor

Comments: From 1993 to 1998 the State reimbursed itself $25,176.95. On the last day of his care, Ryan received $500.00. Ryan is disabled and started his adult live [sic] with only $500.

Account Disbursements: $500.55
State Received: $25,176.95 for foster care reimbursement

Case No. 37: Marcel Paul

Comments: Marcel was in foster care from 1992-1997. He received no special account disbursements.

Account Disbursements: -0-
State Received: $26,647.33

Case No. 38: Brandon Phillips

Comments: Brandon Phillips received no money during his 3 yrs. in foster care.

Account Disbursements: -0-
State Received: $8,642.51

Case No. 41: Joseph Rogers

Comments: 12 yr. old Joseph Rogers also received no money between 1995-1997.

Account Disbursements: -0-
State Received: $10,562.13

Case No. 45: Daniel Stephenson

Comments: From 1992-1998, the State paid itself $37,621.73. This young man, between

the age of 6-12 Received [sic] no special account disbursements.

Account Disbursements: -0-
State Received: $37,621.73

Case No. 46: Jacob Taylor

Comments: Jacob Taylor, a male, collected $41,825.96 of SSA/SSI benefits. The State collected $41,278.08 and $547.88 was returned to the Social Security Administration. This young man received no money whatsoever while he was in foster care.

Account Disbursements: $547.88
State Received: $41,278.08

Case No. 47: Amanda Tulowetzke

Comments: This case, again, illustrates that girls do a little better in foster are [sic] than do boys. She received account disbursements of $11,300.26. Caseworker requested money for a dental crown. Trust fund unit refused because dental crowns are not within medial care authorized for federal reimbursement. Amanda received regular disbursements from her account for clothing, 3 months of alternative school enrollment with supplies. The lion's share of her special reimbursement occurred when she surprised DSHS with an emancipation decree. She received $9,179.76 on the date of her emancipation.

Exhibit E

Account Disbursements: $11,300.26
State Received: $19,488.93

Case No. 48: Jay Warden

Comments: Jay Warden was in foster care for 8 years, receiving no disbursements.

Account Disbursements: -0-
State Received: $43,580.92

Exhibit F

Children's Administration
Regional Allotments
10/29/99 12:34
C19

Source of Funds FY00	
1910, 1920	
State	37,407,045
Total State	37,407,045
IV-E (658)	9,317,124
T19 (T & U)	2,614,114
TANF	3,579,000
Total Federal	15,510,238

Exhibit G

SOCIAL SECURITY ACCOUNTING

Last Name	HUTCHINSON
First Name	DANETTA
MI	
SSN	536-27-6761
DOB	4/5/93
Funding Source	SSI

Payments Received	$34,302.52
Interest Earned	$108.08
Payments Returned	$3,547.60
Account Disbursements	$7,604.60
Foster Care Reimbursement	$23,258.40
Balance	$0.00

Wendesday, January 15, 2000

Exhibit G

Social Security Accounting

Last Name	BAKKON
First Name	THOMAS
MI	T
SSN	536-90-8793
DOB	7/22/81
Funding Source	SSI

Payments Received	$28,418.96
Interest Earned	$0.00
Payments Returned	$1,501.65
Account Disbursements	$0.00
Foster Care Reimbursement	$26,917.31
Balance	$0.00

Thursday, December 23, 1999

SUPERIOR COURT OF WASHINGTON
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND THE DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 PLAINTIFF'S ~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing upon Plaintiff's Motion for Summary Judgment. The following documents were considered.

I.

DOCUMENTS CONSIDERED

1. Complaint for Class Action, Cd 1;

2. Plaintiff's Motion for Summary Judgment, Cd 35;

3. Declaration of Facts in Support of Plaintiff's Motion for Summary Judgment, Cd 36, with attached Exhibit Notebook;

4. The Exhibits contained in Plaintiff's Exhibit Notebook referenced in the aforesaid Declaration of Facts, Cd 36;

5. Brief in Support of Motion for Summary Judgment filed by Plaintiff, Cd 37;

6. Defendant's Motion for Summary Judgment, filed by the State of Washington, Department of Social and Health Services, Cd 40;

7. Affidavit of Richard Anderson, dated July 24, 1997, with attachments and exhibits, Cd 40;

8. Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, filed by the State of Washington, Cd 41;

9. Reply Brief filed by Plaintiffs, Cd 44A;

10. Affidavit of Richard J. Anderson, dated September 17, 1997, Cd 51;

11. Department's Response to Plaintiff's Reply Brief, filed by the State of Washington, dated September 17, 1997, Cd 50;

12. Plaintiff's Motion to Amend Complaint to Clarify Redress Sought by Plaintiffs, dated October 1, 1997, Cd 46;

13. Plaintiff's Motion to Add Additional Named Defendants as Parties in Interest, Cd 45;

14. Declaration of Richard Price, Cd 4

15. Plaintiff's Motion to Amend Complaint, Cd 55;

16. Plaintiff's First Amended Complaint, Cd 58;

17. Defendant's Motion to Strike Portions of Amended Complaint, Cd 63;

18. Department's *Supplemental* Memorandum in Support of Motion for Summary Judgment, Cd 65;

19. Order Granting Amendment of Order Certifying Class Action, Cd 66;

20. Order Allowing Amendment of Complaint, Cd 67;

21. Plaintiff's Reply brief re Motion to Strike, CD 68;

22. Department's Supplemental Brief on Summary Judgment, Cd 70;

23. Defendant's Motion to Dismiss, Cd 71;

24. Defendant's Memorandum in Support of Motion to Dismiss, CD 73;

25. Plaintiff's Brief in Opposition to Motion to Dismiss, Cd 74;

26. Plaintiff's Outline of Briefing Arguments (not filed);

27. Motion to Strike Outline of Briefing Arguments, Cd 75;

28. Outline of Defendants Briefing Arguments, Cd 77;

29. Memorandum Opinion, CD 78;

30. Arguments of Counsel, Rodney M. Reinbold for Plaintiff and Debra Casparian for Defendants, heard October 3, 1997;

31. Answer;

32. Motion for Class Action Certification;

33. Motion and Memorandum in Support of Motion to Dismiss Office of Financial Recovery's Failure to Join a Necessary and Indispensable Party;

34. Amended Answer;

35. Reply Brief Re: Class Certification and Motion to Join the Social Security Administration;

36. Order Certifying Case to Proceed as a Class Action, Defining the Class and Denying the Defendant's otion [sic] to Dismiss; and

37. Motion to Amend Class.

NOW, THEREFORE,

Based upon the Court's Memorandum Opinion dated September 29, 1998, the Plaintiff's Motion for Summary Judgment as amended, is granted, accordingly IT IS ORDERED:

* * * * *

II.

INJUNCTIVE RELIEF

2.1 The State of Washington and its officers, agents or representatives including the above named Defendants, Lyle Quasim and Michael R. Hobbs, are enjoined from engaging in any legal process to remove a private representative payee designated by the Social Security Administration or to institute or threaten to institute legal proceedings or administrative proceedings to require a private representative payee to repay the State of Washington for the cost of maintaining a child in foster care from Title II Social Security Benefits or Title XVI Social Security Benefits.

2.2 IT IS FURTHER ORDERED that the State of Washington and its agents are mandatorily enjoined beginning 120 days from entry of this Order, in those situations where the State or its DSHS Trust Fund Unit, apply to become a representative payee on behalf of minors in its Foster Care Program, under Title II or Title XVI of the Social Security Act, to, in advance of, or simultaneously with such application, provided the minor child's , [sic] parent or legal guardian and court with notice including, but not limited to, at least, the following:

2.2.1 A written notice that any money received by the representative payee is to be held in trust to be paid for the benefit of the child beneficiary and will not be paid to the state to offset the cost of maintaining a child in foster; and

2.2.2 An application form for representative payee status is to be enclosed with a list of preferred representative payees along with the necessary mailing and filing deadline.

2.3 In those cases where the State of Washington, its agents, or the Department of Social And Health Services Trust Fund Unit, have been or will be serving as Representative Payee under Title II or Title XVI of the Social Security Act, for a child enrolled in the State's foster care program, the State of Washington, and its agents and representative and the Washington State Department of Social and Health Services Trust Fund Unit, are enjoined from in any way administering the funds to offset the State's cost of maintaining a child in foster care but will administer the program to maximize public assistance and social security benefits.

III.

ACCOUNTING FOR DIVERTED BENEFITS

3.1 The State of Washington, its agents, and its Department of Social and Health Services Trust Fund Unit are hereby ordered to provide to the Court and to Rodney Reinbold and Richard Price within (120) days after this Order is signed.

3.1.1 A list of all class members for whom it has acted or is acting as representative payee under Title II of the Social Security Act since April 18, 1975 and for whom the statute of limitations has not expired; and

3.1.2 A list of all class members for whom it has acted or is acting as representative payee under Title XVI of the Social Security Act since April 18, 1975 for whom the statute of limitation s [sic] has not expired ; [sic] and

3.2 An accounting of all moneys received and spent for each listed beneficiary since April 18, 1975, [sic]

3.3 Defendants will preserve all current records and will not destroy, alter or purge any records now in existence.

3.4 The records produced shall be kept confidential by the attorneys who receive them and they shall be filed with the clerk of the court in a sealed envelope.

3.5 The Defendant, pursuant to RCW 40.14.060, has destroyed records earlier than 1991.

IV.

RESTORATION OF DIVERTED FUNDS

4.1 Upon receipt of the aforesaid information, Richard Price and Rodney Reinbold shall, within 45 days, file a claim with the State of Washington Office of Risk Management notifying the State of its obligation to restore benefits which are revealed to have been wrongfully diverted from each class member's account. Such Claims shall include interest at the rate of 12% per annum.

4.2 IT IS FURTHER ORDERED that the total dollar amount determined in paragraph 4.1 shall be paid into a single estate guardianship "common fund" to be administered by an independent attorney/estate guardian approved by the Court.

4.3 The guardian shall administer the common fund as follows:

4.3.1 The Attorney/Guardian shall deposit and maintain control of the monies funded by the state in a

single bank account entitled "Keffeler Class Action Social Security Benefits Account";

4.3.2 The Attorney/Guardian shall hire an accounting firm, approved by the court, to establish an accounting system in order to account to individual class members in accordance with this and subsequent orders. The Attorney/Guardian shall invest the funds, pending distribution, in accordance with RCW 11.92.040(5)(a);

4.3.3 The Attorney/Guardian shall pay the attorney fees ordered by the Court;

4.3.4 The Attorney/Guardian shall apply for the set aside of funds budgeted for administration of the fund.

4.3.5 Following payment of attorney fees and set aside for costs of administration, the Attorney/Guardian shall disburse funds from the common account to individual class members or their representative payees on a pro-rata basis in accordance with the accounting to be approved by this Court, and in accordance with RCW Title 11 concerning the disbursement of funds to minor guardianship estate beneficiaries. Provided, however, in no event shall the funds be disbursed to the State of Washington to offset the cost of maintaining the child in foster care.

4.3.6 The Attorney/Guardian shall file a quarterly report with the Court as to all actions taken including an accounting for all funds received and disbursed.

4.3.7 No administration fees or expenses shall be paid unless approved by order of this Court.

V.

ATTORNEYS FEES

IT IS HEREBY ORDERED that Plaintiff should be awarded attorney fees, the amount of which, and the theory under which awarded, shall abide future ruling of this Court.

IV.

JUDGMENT IN FAVOR OF DANNY KEFFELER

6.1 The State of Washington violated 42 U.S.C. 408 when it and its agents diverted $4,998 (20 months payments from July 1991 to March 1993) to itself to reimburse the State's cost of foster care for him. Accordingly, Danny Keffeler is entitled to restoration of his Social Security Benefits in the amount of $4,998 plus interest from May 1992, the midpoint between the months in which payments were diverted (July 1991-March 1993), at the rate of 12% per annum, which interest total $3, 872 to November 1, 1998.

6.2 Additionally, the State's violation of 42 U.S.C. 408, proximately caused Danny Keffeler to incur attorney's fees of $2,639, in appearances before the Social Security Administration Board of Hearings and Appeals in defending himself against the State of Washington's effort to divert $5,430 of his benefit.

6.3 Additionally, the State's violation of 42 U.S.C. 408 proximately caused Danny Keffeler to incur attorneys fees in appearances before the Superior Court of the State of Washington to preserve Social Security moneys against

claims made by the State of Washington against his Guardianship Estate for reimbursement of the cost of foster care, which fees were in the amount of $2,791. This amount should bear interest at 12% per annum as of February 2, 1995, approximately the last charge made, which will result in interested charges of $1,256 to November 1998.

Dated: January 5, 1999.

//s//
Jack Burchard, Superior Court Judge

Presented by:

REINBOLD & GARDNER

//s//
Rodney Reinbold WSBA #4656
Attorney for Plaintiff

LAW OFFICES OF RICHARD B. PRICE, P.S.

//not s//
Richard B. Price, WSBA #3203
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, QUASIM AND HOBBS, Defendants.	No. 96-2-00157-2 MEMORANDUM OPINION

QUESTION PRESENTED:

Does 42 USC § 407 preempt the procedure whereby Washington DSHS, as protective payee, takes social security benefits from children in compensation for the cost of foster care?

Danny Keffeler sues one behalf of himself and other foster children. Danny was placed in foster care in 1989. When his mother died in 1990, he was left with no surviving parent and became eligible for social security survivor benefits under Title II. In the State of Washington approximately 370 children in foster care receive survivor benefits under Title II of the Social Security Act and about 1261 receive benefits under Title XVI which provides supplemental security income for the disabled. For all the

children in foster care the state makes payments for the cost of basic care and needs such as food, clothing, shelter and medical care.

Danny Keffeler's grandmother was appointed guardian of his estate in state court and protective payee to receive his social security payments by the Social Security Administration. The State of Washington Department of Social and Health Services (DSHS) successfully applied to the Social Security Administration to be appointed protective payee (For the purpose of this argument DSHS, DCFS and Department are used interchangeably). However, the Office of Hearing and Appeals eventually ruled that the grandmother should be reinstated. While it served as representative payee, in accordance with state statutes and regulations, DSHS received Danny Keffeler's social security payments and without his consent paid that money to itself as compensation for his foster care expenses.

When the grandmother was reinstated as protective payee DSHS attempted collection by filing a creditor's claim and a motion to show cause in the state guardianship proceedings. DSHS also pursued administrative appeals of the adverse social security administration action.

In essence Danny Keffeler's claim is typical of all foster children in Washington who are entitled to social security benefits. It is the policy of the State of Washington DSHS to apply to the Social Security Administration to become the representative payee for all children in foster care. That procedure is authorized by state law. RCW 74.13.060. WAC 388-70-069. When DSHS received social security payments on behalf of foster children, it transfers the money to itself as reimbursement for foster care expenses it has paid.

The Department of Social and Health Services is acting under the authority of RCW 74.13.060 which provides in relevant part:

> The secretary or his designee or delegatee shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the Department of Social and Health Services pursuant to RCW 74.13. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations.
>
> . . . (2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person. . . .

The Department believes that a number of administrative regulations also require it to use foster children's social security benefits to repay the cost of foster care. The Department particularly relies upon WAC 388-70-069 which states:

> (1) If a child in foster care is entitled to financial benefits the income shall be used on behalf of the child to help pay for the cost of the foster care received . . . .
>
> (a) Income includes SSI, RSDI, veteran's benefits, railroad retirement benefits, inheritances, or any other payment for which the child is eligible. . . .

For the sole purpose of obtaining reimbursement for foster care costs, DSHS applies to the Social Security Administration to be appointed representative payee for all children in foster care who are eligible for social security benefits. Under federal regulation DSHS may be appointed as representative payee. DSHS claims that when it compensates itself for foster care services it is acting properly because it is using the money toward the cost of maintenance (including food, shelter, clothing, medical care and personal comfort items) as required by federal law, 20 CFR § 404.

Similar state attempts to reach social security payments have experienced a history of rejection. The issue arises because federal law provides unique protections to social security payments. 42 USC § 407 states:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted, on or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

The Supreme Court first addressed the issue in *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 93 S. Ct. 590, 34 L. Ed. 2d 608 (1973). New Jersey provided financial assistance to the totally disabled. As a condition of receiving assistance they were required to execute an agreement to

reimburse the county welfare board. When one of the beneficiaries collected social security disability, the welfare board sued to enforce the agreement to reimburse. The Supreme Court ruled that § 407 bars a state from attempting to attach social security benefits as reimbursement for state welfare assistance payments.

Two observations by the Supreme Court are especially pertinent:

> We see no reason why a state, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor. 409 US at 416.

> It (§ 407) imposes a broad bar against the use of any legal process to reach all social security benefits. That is broad enough to include all claimants, including a state. 409 US at 417.

In *Bennett v. Arkansas*, 485 US 395, 108 S. Ct. 1204, 99 L. Ed. 2d 455 (1988) the state attached prisoners' social security benefits to defray the cost of maintaining the prison systems. Under the State Prison Inmate Care and Custody Reimbursement Act, Arkansas filed an action in state court. Arkansas courts ruled and the state argued that § 407 contains an implied exception to the exemption from legal process where the state provides for the care and maintenance of a beneficiary of social security funds. The Supreme Court found no such exception and ruled that § 407 preempted Arkansas' attempt to attach prisoners' social security benefits. *Bennett* rules out any attempt to attach social security benefits even when the benefits would be used to pay the cost of caring for a prisoner.

In *Brinkman v. Rahm*, 878 F.2d 263 (9th Cir. 1989) the Ninth Circuit ruled that § 407 preempts the procedure whereby Washington deducted social security benefits to pay the cost of patient care from the accounts of involuntarily committed mental health patients. Although court action and attachment were threatened, the actual practice was to provide written notice and then simply deduct the funds from the patients' hospital accounts.

The issue was most clearly addressed by the Ninth Circuit in *Crawford v. Gould*, 56 F.3d 1162 (9th Cir. 1995). Under California law patients committed to state psychiatric hospitals were liable for the cost of their care, support and maintenance. Each hospital maintained a patient trust account, where all funds, including social security received by the patient, were deposited. Patients were provided statements of financial liability and required to sign authorization to withdraw funds to pay the cost of care. Whether the patient signed the authorization or not, the funds were withdrawn.

California argued that *Brinkman* does not apply because the hospital's deduction of money from patient accounts did not run afoul § 407's prohibition against attachment or other legal process. *Crawford* clearly rejected that argument in favor of a more expansive view of § 407's protection. 56 F.3d at 1166:

> Our conclusion that "other legal process" includes the procedure that California uses to deduct social security benefits, is consistent with the purpose of § 407. The non-assignment provision was not designed to preclude use of only the judicial process to obtain Social Security benefits. Rather § 407(a) is designed "to protect social security beneficiaries and their dependents from the claims of creditors"....The cramped reading of § 407

California urges would enable the state to obtain Social Security benefits through procedures that afford less protection than judicial process affords.

In the present case DSHS offers no persuasive argument to distinguish *Crawford*. DSHS relies upon state law which is preempted by § 407. Alternatively, DSHS relies upon federal regulations, which also must yield to § 407. This Court need not decide whether DSHS may apply and be appointed protective payee for the foster children involved. The question is whether § 407 prohibits DSHS from paying the children's social security benefits to itself as reimbursement for foster care expenses.

DSHS argues that its actions as protective payee do not constitute transfer, attachment or other legal process. This argument should be rejected for at least four substantial reasons. First, application for appointment as protective payee may not violate § 407 per se. However, in these cases DSHS only applies as protective payee for the purpose of obtaining the foster children's social security funds. In that context, DSHS's actions do constitute a transfer, assignment, attachment or other legal process.

Second, as explained in *Crawford* the purpose of § 407 is to protect social security benefits. Allowing DSHS to transfer the money to itself as protective payee would enable the state to obtain social security benefits through procedures that afford less protection than judicial process.

Third, there is no legal basis for distinguishing between the state action forbidden in *Crawford* and the DSHS action challenged here. In *Crawford* the state hospital paid itself money from the patients' trust accounts. Here, DSHS pays itself money held for the benefit of foster children.

Fourth, there is no legal basis for giving foster children less protection for their social security benefits than adult welfare recipients, state prisoners or involuntarily committed mental patients receive.

The policy and fairness issues raised by DSHS are accurately answered by Judge Trott in his concurring opinion in *Crawford*, 56 F.3d at 1169:

> Nevertheless, Judge Tang's conclusion seems to be compelled by Brinkman v. Rahm, 878 F2d 263 (9th Cir. 1989) (per curiam). 42 U.S.C. § 407 as construed by Bennett v. Arkansas, 485 U.S. 395, 108 S.Ct. 1204, 99 L.Ed. 2d 455 (1988) (per curiam), says what it says, and we should be loath to constrict the catchall words, "or other legal process" to allow the state access to a patient-debtor's money. If the patient-debtor were not under the absolute control of the state, a process such as execution, levy, attachment, garnishment, or some "other legal process," would be needed to get at his funds. But, because in this instance the state controls both the patient and his money, the state need not resort to such devices, as this case demonstrates. Under these circumstances, permitting the state to say, as it does, that taking money from people who don't want to give it up is not "legal process" sounds too much like a construction out of Bleak House, or the parchment stuff that animates Dick the Butcher in Henry the Sixth, Part 2. The end ultimately may be palatable, but the state's recommended manner of achieving it is not.
>
> California's goal may well be reachable, but we cannot get there from here without a sturdy legislative bridge. Thus, the answer to California's problem lies not in the courts but in Congress where, who knows, my analysis

may prove to be misguided. Accordingly, I concur in Judge Tang's Opinion.

This Court concludes that 42 USC § 407 preempts the procedure whereby Washington DSHS, as protective payee, takes social security benefits from children as compensation for the cost of foster care.

Additionally, plaintiff has argued that the notice provided by DSHS was defective and violated due process requirements as described in *Crawford* and other authorities. DSHS maintains this Court should not reach the due process issue because actual notice was provided by the Social Security Administration, not a party to this action. DSHS uses a similar argument to avoid responsibility for its own appointment as protective payee. DSHS maintains that because the Social Security Administration chose to appoint DSHS, its actions should not be construed as unlawful.

However, two conclusions are clear. First, the notice to foster children is gravely deficient and potentially misleading in failing to inform them of the intended result of DSHS's appointment. Second, fair and sufficient notice is a requirement of due process. Therefore, it is clear that DSHS takes social security benefits from children without due process of law. DSHS offers no authority for the proposition that it may take full advantage of the defective notice because it was issued by Social Security.

IN THE SUPERIOR COURT OF WASHINGTON
FOR OKANOGAN COUNTY

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 ORDER ALLOWING AMENDMENT OF COMPLAINT

THIS matter having come on regularly before the above-entitled Court on Plaintiff's Motion to Add Additional Named Defendants As Real Parties In Interest and the Court having considered Plaintiff's Motion and supporting information and having heard oral arguments of counsel by telephonic conference and being fully advised in the premise,

NOW THEREFORE,

IT IS HEREBY ORDERED that Plaintiffs are granted leave to file an Amended Complaint naming Lyle Quasim, the Director of the Department of Social and Health Services and Michael R. Hobbs, Program Manager for Social Security Income Department of Social and Health Services Department of Children and Family Service, as additional named defendants.

DATED this 7th day of November, 1997.

Presented by:

LAW OFFICE OF RICHARD B. PRICE, P.S., INC.

Richard B. Price, WSBA #3203
Co-Counsel for Plaintiff

REINBOLD & GARDNER

Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiff

Copy received, approved as to form,
Notice of presentment waived:

//ss//

Debra E. Casparian, WSBA #26354
Assistant Attorney General as
Attorneys for State of Washington
Dept. of Social & Health Services

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 ORDER GRANTING AMENDMENT OF ORDER CERTIFYING CLASS ACTION

THIS matter having come on regularly before the above-entitled Court on Plaintiff's Motion to Amend the Order Certifying the Class previously entered on the 19th day of May, 1997, so as to include foster children within the state of Washington receiving Title XVI Social Security payments and the Court having considered Plaintiff's Motion and supporting information and having heard oral arguments of counsel by telephonic conference and being fully advised in the premise,

NOW THEREFORE,

IT IS HEREBY ORDERED that definition of the class in paragraph 2 on page 4 of the Order Certifying the Class is amended to read as follows, to wit:

2. The class hereby certified is defined as follows:

Subclass A. All foster children within the State of Washington, past, present and future in foster care that receive Title II Social Security payments for whom the State of Washington acts or has sought to act as "representative payee".

Subclass B. All foster children within the State of Washington, past, present and future in foster care that receive Title XVI Social Security payments for whom the State of Washington acts or has sought to act as "representative payee".

IT IS FURTHER ORDERED that the Class Certification Order of May 19, 1997 shall remain in full force and effect in all other respects except as modified by this Order.

IT IS FURTHER ORDERED that the Defendant State of Washington is granted until the 4th day of November, 1997 to submit any additional authority concerning the amendment of the class definition to include Subclass B. The Plaintiffs shall be granted until November 25, 1997 to respond to the State any pleadings filed by the State. The Defendant State of Washington shall be granted until December 8, 1997 to reply.

IT IS FURTHER ORDERED that the matter of the amendment of this Order will be considered submitted without oral argument unless specifically noted for oral argument by any parties on or before December 10, 1997.

DATED this 7th day of November, 1997.

Presented by:

LAW OFFICE OF RICHARD B. PRICE, P.S., INC.

Richard B. Price, WSBA #3203
Co-Counsel for Plaintiff

REINBOLD & GARDNER

Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiff

Copy received, approved as to form,
Notice of presentment waived:

//ss//
Debra E. Casparian, WSBA #26354
Assistant Attorney General as
Attorneys for State of Washington
Dept. of Social & Health Services

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE
COUNTY OF OKANOGAN

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, AND OTHER PERSONS SIMILARLY SITUATED, Plaintiff, v. STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES, AND THE DEPARTMENT OF LICENSING, Defendants.	No. 96-2-00157-2 ORDER CERTIFYING CASE TO PROCEED AS A CLASS ACTION, DEFINING THE CLASS AND DENYING DEFENDANTS' MOTION TO DISMISS

THIS MATTER having come on regularly before the above entitled Court on Plaintiffs' motion to certify a class wherein the Plaintiffs could proceed as a representative of all other persons similarly situated and the Plaintiffs having moved during argument to modify the definition of the class to be certified and there be no objection from the State and the Court having heard the arguments of counsel, read the memorandum and the files in this case and being fully informed in the premises, the Court does find as follows:

1. Plaintiffs do satisfy Civil Rule 23(a)(1) in that the State's admission of at least 370 current members of the class make joinder impractical.

2. Plaintiffs satisfy Civil Rule 23(a)(2) as to commonality in that the overriding, common legal issue

which pervades the entire case is whether the Defendant State, as representative payee, is legally entitled to pay itself or receive from any other designated representative payee monies as reimbursement for services provided by the State to children in foster care. This issue outweighs all other aspects of the case.

3. Plaintiffs satisfy Civil Rule 23(a)(3) in that Plaintiffs' claims are typical of the putative class members' claims with regard to the common issue cited immediately above. That common issue is identical to every member of the class and that issue does not raise antagonistic or prejudicial interests of one class member against another.

4. Plaintiffs satisfy Civil Rule 23(a)(4) in that both the guardian and ward have signed the complaint. There is no substantial difference between the guardian's interest and the ward's interest with respect to the common issue recited above. Plaintiffs' co-counsel are experienced trial lawyers and have the financial resources and legal expertise to adequately and competently represent the named Plaintiffs as well as the putative class members.

5. The case should be litigated one time as to whether officers of the State of Washington are violating the law by applying or receiving foster children's Title II Social Security payments as reimbursement for expenditures made for foster care. The most efficient way to resolve that matter and give direction to the State without unnecessarily involving other Courts and running the risk of inconsistent decisions is to certify the case pursuant to Civil Rule 23(b)(2) even though it could, as well, be certified as a 23(b)(1)(A) or 23(b)(1)(B) action.

In the event the Court finds that the Defendant State has wrongfully diverted the foster children's Title II Social

Security payments, any reimbursement to the class will follow automatically. Money reimbursement to the class, in such event, will not change the character of the suit. Injunctive and/or mandatory injunctive relief is overriding in this situation making certification pursuant to Civil Rule 23(b)(2) appropriate.

6. The case is not moot by virtue of Danny Keffeler having turned the age of majority as Danny Keffeler has a right to sue individually for monetary relief and further, Plaintiffs' claim raises issues of sufficient public interest that it is desirable to have an authoritative determination which will provide future guidance for public officers, in this case the State of Washington, Department of Social and Health Services. This is particularly true under the instant circumstances wherein the State's conduct will continue and reoccur unless ordered otherwise.

NOW, THEREFORE,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs' action is hereby certified as a Civil Rule 23(b)(2) class action.

2. The class hereby certified is defined as follows:

All foster children within the State of Washington, past, present and future in foster care that receive Title II Social Security payments for whom the State of Washington acts or has sought to act as "representative payee".

3. By virtue of this action being certified as a Civil Rule 23(b)(2) class action, no notice to the class is required.

IT IS HEREBY FURTHER ORDERED THAT Danny Keffeler ratify his inclusion and that he be named as a representative Plaintiff. In this regard Danny Keffeler may signify his ratification and be considered a named Plaintiff without further amendment of the pleadings by filing with the Court within thirty (30) days a declaration that he is informed and aware of the Court's decision concerning this matter and that he agrees to be named and participate as a named Plaintiff and has been advised by Plaintiffs' co-counsel of the responsibilities of a representative plaintiff in a class action.

IT IS FURTHER ORDERED that Defendants' motion to dismiss Plaintiffs' claim for lack of an indispensable party is hereby denied.

DATED THIS 19th day of May, 1997.

//s// Jack Burchard
Judge/~~Court Commissioner~~

Presented by:

RICHARD B. PRICE, P.S., INC.

//s//
Richard B. Price, WSBA #3203
Co-Counsel for Plaintiffs

REINBOLD and GARDNER

//s//
Rodney Reinbold, WSBA #4656
Co-Counsel for Plaintiffs

Copy received, approved as to form,
Notice of presentment waived:

CHRISTINE O. GREGOIRE, Attorney General

//s//
Debra E. Casparian, WSBA #26354
Assistant Attorney General as
Attorneys for State of Washington
Dept. of Social & Health Services

(ORDER LIST: 534 U.S.)

FRIDAY, FEBRUARY 15, 2002

ORDERS IN PENDING CASES

01A557 WA DEPT. OF SOCIAL & HEALTH SERV., ET AL. V. GUARDIANSHIP ESTATE OF DANNY KEFFELER, ET AL.

The Solicitor General is invited to file a brief in this case expressing the views of the United States on or before 3 p.m., Friday, March 1, 2002.

00-1406 ....

Supreme Court of the United States

No. 01A557

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.,

Applicants,

v.

GUARDIANSHIP ESTATE OF DANNY KEFFELER, BY WANDA PIERCE, GUARDIAN, ET AL.,

---

ORDER

UPON CONSIDERATION of the application of counsel for the applicant.

IT IS ORDERED that the mandate of the Supreme Court of Washington, case No. 67680-1, issued on December 14, 2001, is recalled and stayed pending receipt of a response, due on or before February 5, 2002, and further order of the undersigned or of the Court.

/s/ Sandra D. O'Connor
Associate Justice of the Supreme Court of the United States

Dated this 29th
date of January 2002

[WASHINGTON SUPREME COURT LETTERHEAD]

January 22, 2002

Honorable Christine Gregoire
Attorney General
Ms. Debra Casparian, Asst.
P.O. Box 40123
Olympia, WA 98504-0123

Honorable Christine Gregoire
Attorney General
Mr. Lawrence Lockwood, Asst.
P.O. Box 40124
Lacey, WA 98504-0124

Honorable Christine Gregoire
Attorney General
Mr. William Collins, Asst.
P.O. Box 40100
Olympia, WA 98504-0100

Mr. Richard Price
Attorney at Law
P.O. Box 1687
Omak, WA 98841

Mr. Rodney Reinbold
Attorney at Law
P.O. Box 751
Okanogan, WA 98840

Re: Supreme Court No. 67680-1 – Guardianship Estate of Danny Keffeler, et al. v. DSHS, et al.
Court of Appeals No. 18157-0-III
Okanogan County No. 96-2-00157-2

Counsel:

The following notation order was entered on January 22, 2002, by the Supreme Court Deputy Clerk in the above entitled cause:

MOTION FOR STAY PENDING REVIEW BY THE SUPREME COURT OF THE UNITED STATES:

"Motion denied, see RAP 12.6."

/s/ Ronald R. Carpenter,
Deputy Clerk.

Sincerely,

//s//
RONALD R. CARPENTER
Deputy Clerk

RRC:jaa

§ 402. Old-age and survivors insurance benefit payments

§ 402(d).

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in case of a child (as so defined) of an individual entitled to an old- age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)), whichever is earlier, and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month;

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity), or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(H) if the benefits under this subsection are based on the wages and self- employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at

such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection, such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full- time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)),

subject to section 423(e) of this title or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection—

(A) A "full-time elementary or secondary school student" is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a "full-time elementary or secondary school student" if he is paid by the his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary school student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance

at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An "elementary or secondary school" is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a "full-time elementary or secondary school student" or "intends to continue to be in full- time attendance at an elementary or secondary school", within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such

benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits, a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and

(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9) (A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

(10) For purposes of paragraph (1)(H)—

(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).

§ 405. Evidence, procedure, and certification for payments

§ 405(a).

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

§ 405(j).

(j) Representative payees

(1) (A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter, would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee"). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1007 or 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(2) (A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B) (i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter, subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or subchapter XVI of this chapter [42 U.S.C.A. S 1381 et seq.],

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title, and

(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or subchapter XVI of this chapter.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or subchapter XVI of this chapter, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408, 1011 of this title, or 1383a of this title.

(C) (i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been terminated as described in section 1383(a)(2)(B)(ii)(IV) of this title, or

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to—

(I) a community-based nonprofit social service agency licensed or bonded by the State,

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate, unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii) (I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in paragraph (1)(B).

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b) of this section, and to judicial review of the Commissioner's final decision as is provided in subsection (g) of this section.

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3) (A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title.

(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1007 of this title or 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4) (A)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is described in paragraph (1)(B)).

The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(B) For purposes of this paragraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee, if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection or section

1007 of this title or 1383(a)(2) of this title, concurrently to 5 or more individuals,

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

(iii) Repealed. Pub.L. 103-296, Title II, S 201(a)(2)(B)(ii)(IV), Aug. 15, 1994, 108 Stat. 1493

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with Title 18, or imprisoned not more than 6 months, or both.

(D) Repealed. Pub.L. 103-296, Title II, S 201(a)(2)(B)(iii), Aug. 15, 1994, 108 Stat. 1493

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Commissioner of Social

Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6) The Commissioner of Social Security shall include as a part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.

(7) For purposes of this subsection, the term "benefit based on disability" of an individual means a disability insurance benefit of such individual under section 423 of this title or a child's, widow's, or widower's insurance benefit of such individual under section 402 of this title based on such individual's disability.

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 [26 U.S.C.A. S 3402] by the person entitled to such benefit or such person's representative payee.

§ 408. Penalties.

(a) In general

Whoever--

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of Title 26) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and Title 26), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in Title 26) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any

payment or for a disability determination under this subchapter; or

(3)at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the

purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A)willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

(9), (10) Repealed. > Pub.L. 106-554, S 1(a)(4) [Div. A, S 213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-180

shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years, or both.

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under Title 18 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

(b) Effect upon certification as payee

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title.

(c) Definitions

For the purpose of subsection (a)(7) of this section, the terms "social security number" and "social security account

number" mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(d) Aliens

(1)Except as provided in paragraph (2), an alien—

(A)whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of Title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of Title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of Title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

§ 1383. Procedure for payment of benefits

§ 1383(a).

(a) Time, manner, form, and duration of payments; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) (A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii) (I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's "representative payee") for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug

addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter [42 U.S.C.A. S 401 et seq.], subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title; and

(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter [42 U.S.C.A. S 401 et seq.], subchapter VIII of this chapter [42 U.S.C.A. S 1001 et seq.], or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause

(ii)(IV), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(IV) of this title; or

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such

individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) a community-based nonprofit social service agency licensed or bonded by the State;

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,
unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of

the Commissioner's determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c) of this section.

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(C) (i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases,

the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is described in subparagraph (A)(ii)(II)).

The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that

any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term "qualified organization" means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any community-based nonprofit social service agency, which—

(I) is bonded or licensed in each State in which the agency serves as a representative payee; and

(II) in accordance with any applicable regulations of the Commissioner of Social Security—

(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) or 1007 of this title concurrently to 5 or more individuals; and

(bb) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

(cc) Repealed. Pub.L. 103-296, Title II, S 201(b)(2)(B)(ii)(IV)(cc), Aug. 15, 1994, 108 Stat. 1501

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security

may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with Title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(E) Restitution

In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F) (i) (I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial

institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

(II) Benefits described in this subclause are past-due monthly benefits under this subchapter (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93-66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g) of this section) that exceeds the product of—

(aa) 6, and

(bb) the maximum monthly benefit payable under this subchapter to an eligible individual.

(ii) (I) A representative payee shall use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II).

(II) An allowable expense described in this subclause is an expense for—

(aa) education or job skills training;

(bb) personal needs assistance;

(cc) special equipment;

(dd) housing modification;

(ee) medical treatment;

(ff) therapy or rehabilitation; or

(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and

(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied.

(IV) This clause shall continue to apply to funds in the account after the child has reached age 18,

regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this subchapter to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93-66).

(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).

(G) The Commissioner of Social Security shall include as a part of the annual report required under section 904 [FN1] of this title information with respect to the implementation of the preceding provisions of this paragraph, including—

(i) the number of cases in which the representative payee was changed;

(ii) the number of cases discovered where there has been a misuse of funds;

(iii) how any such cases were dealt with by the Commissioner of Social Security;

(iv) the final disposition of such cases (including any criminal penalties imposed); and

(v) such other information as the Commissioner of Social Security determines to be appropriate.

(H) The Commissioner of Social Security shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Commissioner of Social Security shall include in the annual report required under section 904 [FN1] of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Commissioner's report under section 405(j)(4)(B) of this title.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits for the month following the date the application is filed and who is faced with financial emergency a cash advance against such benefits, including any federally- administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility, which shall be

repaid through proportionate reductions in such benefits over a period of not more than 6 months; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b-19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7) (A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter.

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984 for which

(under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B) (i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(8) (A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) of this section that an individual is entitled to benefits based on disability or blindness under this subchapter and the Commissioner of Social Security has not issued the

Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this subchapter pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this subchapter, unless payment of such benefits was fraudulently obtained.

(9) Benefits under this subchapter shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.

(10) (A) If an individual is eligible for past-due monthly benefits under this subchapter in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g) of this section) equals or exceeds the product of—

(i) 12, and

(ii) the maximum monthly benefit payable under this subchapter to an eligible individual (or, if appropriate, to an eligible individual and eligible spouse),

then the payment of such past-due benefits (after any such reimbursement to a State) shall be made in installments as provided in subparagraph (B).

(B) (i) The payment of past-due benefits subject to this subparagraph shall be made in not to exceed 3 installments that are made at 6-month intervals.

(ii) Except as provided in clause (iii), the amount of each of the first and second installments may not exceed an amount equal to the product of clauses (i) and (ii) of subparagraph (A).

(iii) In the case of an individual who has—

(I) outstanding debt attributable to—

(aa) food,

(bb) clothing,

(cc) shelter, or

(dd) medically necessary services, supplies or equipment, or medicine; or

(II) current expenses or expenses anticipated in the near term attributable to—

(aa) medically necessary services, supplies or equipment, or medicine, or

(bb) the purchase of a home, and

such debt or expenses are not subject to reimbursement by a public assistance program, the Secretary under subchapter XVIII of this chapter [42 U.S.C.A. S 1395 et seq.], a State plan approved under subchapter XIX of this chapter [42 U.S.C.A. S 1396 et seq.], or any private entity legally liable to provide payment pursuant to an insurance policy, pre-paid plan, or other
arrangement, the limitation specified in clause (ii) may be exceeded by an amount equal to the total of such debt and expenses.

(C) This paragraph shall not apply to any individual who, at the time of the Commissioner's determination that such individual is eligible for the payment of past-due monthly benefits under this subchapter—

(i) is afflicted with a medically determinable impairment that is expected to result in death within 12 months; or

(ii) is ineligible for benefits under this subchapter and the Commissioner determines that such individual is likely to remain ineligible for the next 12 months.

(D) For purposes of this paragraph, the term "benefits under this subchapter" includes supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

§ 1383(d).

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter [42 U.S.C.A. S 401 et seq.].

(2) (A) The provisions of section 406(a) of this title (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II of this chapter [42 U.S.C.A. S 401 et seq.], except that paragraph (2) thereof shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (C)(i), the phrase "(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter [42 U.S.C.A. S 401 et seq.] made pursuant to section 1320a-6(a) of this title)" for the parenthetical phrase contained therein; and

(ii) by substituting "section 1383(a)(7)(A) of this title or the requirements of due process of law" for "subsection (g) or (h) of section 423 of this title".

(B) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

§ 1383(j).

(j) Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section, or has filed a request for reinstatement of eligibility under subsection (p)(2) and been determined to be eligible for reinstatement.

(2) (A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i) (I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible (other than pursuant to a request for reinstatement under subsection (p)) for benefits under section 1382 or 1382h(a) of this title for a month that

follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii) (I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

§ 404.2001 Introduction

(a) Explanation of representative payment. This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

(b) Policy used to determine whether to make representative payment.

(1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may

appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 404.2010 When payment will be made to representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payments to a beneficiary under age 18 if the beneficiary is—

(1) Receiving disability insurance benefits on his or her own Social Security earnings record; or

(2) Serving in the military services; or

(3) Living alone and supporting himself or herself; or

(4) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(5) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(6) Within 7 months of attaining age 18 and is initially filing an application for benefits.

§ 404.2021 Order of preference in selecting a representative payee.

(first paragraph and (b))

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interest. The preferences are:

. . . .

(b) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's

support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

§ 404.2025 Information to be submitted by a representative payee.

(a) Before we select a representative payee, the payee applicant must give us information showing his or her relationship to the beneficiary and his or her responsibility for the care of the beneficiary.

(b) Anytime after we have selected a payee, we may ask the payee to give us information showing a continuing relationship to the beneficiary and a continuing responsibility for the care of the beneficiary. If the payee does not give us the requested information within a reasonable period of time, we may stop paying the payee unless we determine that the payee had a good reason for not complying with our request, and we receive the information requested.

§ 404.2030 Advance notice of the determination to make representative payment.

(a) Generally, whenever we intend to make representative payment and to name a payee, we notify the beneficiary or the individual acting on his or her behalf, of our proposed actions. In this notice we tell the person that we plan to name a representative payee and who that payee will be. We also ask the person to contact us if he or she objects to either proposed action. If he or she objects to either proposed action, the person may—

(1) Review the evidence upon which the proposed actions will be based; and

(2) Submit any additional evidence regarding the proposed actions.

(b) If the person objects to the proposed actions, we will review our proposed determinations and consider any additional information given to us. We will then issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

(c) If the person does not object to the proposed actions, we will issue our determinations. If the person is dissatisfied with either determination, he or she may request a reconsideration.

§ 404.2035 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits;

(c) Submit to us, upon our request, a written report accounting for the benefits received; and

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities.

§ 404.2040 Use of benefit payments.

(a) Current maintenance.

(1) We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

Example: An aged beneficiary is entitled to a monthly Social Security benefit of $400. Her son, who is her payee, disburses her benefits in the following manner:

Rent and utilities	$200
Medical	25
Food	60
Clothing (coat)	55
Savings	30
Miscellaneous	30

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary is a member of an Aid to Families With Dependent Children (AFDC) assistance unit, we do not consider it inappropriate for a representative payee to make the benefit payments available to the AFDC assistance unit.

(b) Institutional care. If a beneficiary is receiving care in a Federal, State, or private institution because of mental or

physical incapacity, current maintenance includes the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary's recovery or release from the institution or expenses for personal needs which will improve the beneficiary's conditions while in the institution.

Example: An institutionalized beneficiary is entitled to a monthly Social Security benefit of $320. The institution charges $700 a month for room and board. The beneficiary's brother, who is the payee, learns the beneficiary needs new shoes and does not have any funds to purchase miscellaneous items at the institution's canteen.

The payee takes his brother to town and buys him a pair of shoes for $29. He also takes the beneficiary to see a movie which costs $3. When they return to the institution, the payee gives his brother $3 to be used at the canteen.

Although the payee normally withholds only $25 a month from Social Security benefit for the beneficiary's personal needs, this month the payee deducted the above expenditures and paid the institution $10 less than he usually pays.

The above expenditures represent what we would consider to be proper expenditures for current maintenance.

(c) Support of legal dependents. If the current maintenance needs of the beneficiary are met, the payee may use part of the payments for the support of the beneficiary's legally dependent spouse, child, and/or parent.

Example: A disabled beneficiary receives a Veterans Administration (VA) benefit of $325 and a Social Security

benefit of $525. The beneficiary resides in a VA hospital and his VA benefits are sufficient to provide for all of his needs; i.e., cost of care and personal needs. The beneficiary's legal dependents—his wife and two children—have a total income of $250 per month in Social Security benefits. However, they have expenses of approximately $450 per month.

Because the VA benefits are sufficient to meet the beneficiary's needs, it would be appropriate to use part of his Social Security benefits to support his dependents.

(d) Claims of creditors. A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A retroactive Social Security check in the amount of $1,640, representing benefits due for July 1980 through January 1981, was issued on behalf of the beneficiary to the beneficiary's aunt who is the representative payee. The check was certified in February 1981.

The nursing home, where the beneficiary resides, submitted a bill for $1,139 to the payee for maintenance expenses the beneficiary incurred during the period from June 1980 through November 1980. (Maintenance charges for December 1980 through February 1981 had previously been paid.)

Because the benefits were not required for the beneficiary's current maintenance, the payee had previously saved over $500 for the beneficiary and the beneficiary had no

foreseeable needs which would require large disbursements, the expenditure for the maintenance charges would be consistent with our guidelines.

§ 404.2040a Compensation for qualified organizations serving as representative payees.

(a) General. A community-based, nonprofit social service agency which meets the requirements set out in paragraph (b) of this section may request our authorization to collect a monthly fee from a beneficiary for providing representative payee services.

(b) Organizations that may request compensation. We will authorize an organization to collect a fee if all the following requirements are met.

(1) It is community-based, i.e., serves or represents one or more neighborhoods, city or county locales and is located within its service area.

(2) It is a nonprofit social service organization founded for religious, charitable or social welfare purposes and is tax exempt under section 501(c) of the Internal Revenue Code.

(3) It is bonded or licensed in the State in which it serves as representative payee.

(4) It regularly provides representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(5) It was in existence on October 1, 1988.

(6) It is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to this requirement.

(c) Creditor relationship. If an organization has a creditor relationship with a beneficiary, we may, on a case-by-case basis, authorize the organization to collect a fee for payee services notwithstanding this relationship. To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The services provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) Authorization process.

(1) An organization must request in writing and receive an authorization from us before it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (b) and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that the requirements of this section are met, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) Revocation, cancellation and expiration of the authorization.

(1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written
notice to us.

(f) Notices. The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) Limitation on fees.

(1) An organization authorized to collect a fee pursuant to this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary if the fee does not exceed the lesser of—

(i) 10 percent of the beneficiary's monthly benefit payments; or

(ii) $25.00 per month.

(2) Any agreement providing for a fee in excess of the amount permitted under paragraph (g)(1) of this section shall be void and treated as misuse of benefits by the organization of the individual's benefits under S 404.2041.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with S 404.2045.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payments for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization may not collect a fee for the expenses it incurred in providing representative payee services if these expenses are paid from another source.

§ 404.2041 Liability for misuse of benefit payments.

Our obligation to the beneficiary is completely discharged when we make a correct payment to a representative payee on behalf of the beneficiary. The payee in his or her personal capacity, and not SSA, may be liable if the payee misuses the beneficiary's benefits.

§ 404.2045 Conservation and investment of benefit payments.

(a) General. After the representative payee has used benefit payments consistent with the guidelines in this subpart (see S 404.2040 regarding use of benefits), any remaining amount shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several Social Security beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the current support and maintenance of the beneficiaries as well as for miscellaneous needs the beneficiaries may have. Several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an

interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) Preferred investments. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

_____ (Name of beneficiary) _____ (Social Security Number), for whom _____ (Name of payee) is representative payee for Social Security benefits;

(2) For interest or dividend paying accounts—

_____ (Name of beneficiary) by _____ (Name of payee), representative payee.

(c) Interest and dividend payments. The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 404.2050 When a new representative payee will be selected.

When we learn that the interests of the beneficiary are not served by continuing payment to the present payee or that the present payee is no longer able to carry out the payee responsibilities, we try to find a new payee. We will select a new payee if we find a preferred payee or if the present payee—

(a) Has not used the benefit payments on the beneficiary's behalf in accordance with the guidelines in this subpart;

(b) Has not carried out the other responsibilities described in this subpart;

(c) Dies;

(d) No longer wishes to be payee;

(e) Is unable to manage the benefit payments; or

(f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which we request.

§ 404.2055 When representative payment will be stopped.

If a beneficiary receiving representative payment shows us that he or she is mentally and physically able to manage or direct the management of benefit payments, we will make direct payment. Information which the beneficiary may give us to support his or her request for direct payment include the following—

(a) A physician's statement regarding the beneficiary's condition, or a statement by a medical officer of the institution where the beneficiary is or was confined, showing that the beneficiary is able to manage or direct the management of his or her funds; or

(b) A certified copy of a court order restoring the beneficiary's rights in a case where a beneficiary was adjudged legally incompetent; or

(c) Other evidence which establishes the beneficiary's ability to manage or direct the management of benefits.

§ 404.2060 Transfer of accumulated benefit payments.

A representative payee who has conserved or invested benefit payments shall transfer these funds, and the interest earned from the invested funds, to either a successor payee or to us, as we will specify. If the funds and the earned interest are returned to us, we will recertify them to a successor representative payee or to the beneficiary.

§ 404.2065 Accounting for benefit payments.

A representative payee is accountable for the use of benefits. We may require periodic written reports from representative payees. We may also, in certain situations, verify how a representative payee used the funds. A representative payee should keep records of what was done with the benefit payments in order to make accounting reports. We may ask the following questions—

(a) The amount of benefit payments on hand at the beginning of the accounting period;

(b) How the benefit payments were used;

(c) How much of the benefit payments were saved and how the savings were invested;

(d) Where the beneficiary lived during the accounting period; and

(e) The amount of the beneficiary's income from other sources during the accounting period. We ask for information about other funds to enable us to evaluate the use of benefit payments.

§ 416.110 Purpose of program.

The basic purpose underlying the supplemental security income program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level. The supplemental security income program replaces the financial assistance programs for the aged, blind, and disabled in the 50 States and the District of Columbia for which grants were made under the Social Security Act. Payments are financed from the general funds of the United States Treasury. Several basic principles underlie the program:

(a) Objective tests. The law provides that payments are to be made to aged, blind, and disabled people who have income and resources below specified amounts. This provides objective measurable standards for determining each person's benefits.

(b) Legal right to payments. A person's rights to supplemental security income payments--how much he gets and under what conditions--are clearly defined in the law. The area of administrative discretion is thus limited. If an applicant disagrees with the decision on his claim, he can obtain an administrative review of the decision and if still not satisfied, he may initiate court action.

(c) Protection of personal dignity. Under the Federal program, payments are made under conditions that are as protective of people's dignity as possible. No restrictions, implied or otherwise, are placed on how recipients spend the Federal payments.

(d) Nationwide uniformity of standards. The eligibility requirements and the Federal minimum income level are identical throughout the 50 States and the District of Columbia. This provides assurance of a minimum income base on which States may build supplementary payments.

(e) Incentives to work and opportunities for rehabilitation. Payment amounts are not reduced dollar-for-dollar for work income but some of an applicant's income is counted toward the eligibility limit. Thus, recipients are encouraged to work if they can. Blind and disabled recipients with vocational rehabilitation potential are referred to the appropriate State vocational rehabilitation agencies that offer rehabilitation services to enable them to enter the labor market.

(f) State supplementation and Medicaid determinations.

(1) Federal supplemental security income payments lessen the variations in levels of assistance and provide a basic level of assistance throughout the nation. States are required to provide mandatory minimum State supplementary payments beginning January 1, 1974, to aged, blind, or disabled recipients of assistance for the month of December 1973 under such State's plan approved under titles I, X, XIV, or XVI of the Act in order for the State to be eligible to receive title XIX funds (see Subpart T of this part). These payments must be in an amount sufficient to ensure that individuals who are converted to the new program will not have their income reduced below what it was under the State program for December 1973. In addition, each State may choose to provide more than the Federal supplemental security income and/or mandatory minimum State supplementary payment to whatever extent it finds

appropriate in view of the needs and resources of its citizens or it may choose to provide no more than the mandatory minimum payment where applicable. States which provide State supplementary payments can enter into agreements for Federal administration of the mandatory and optional State supplementary payments with the Federal Government paying the administrative costs. A State which elects Federal administration of its supplementation program must apply the same eligibility criteria (other than those pertaining to income) applied to determine eligibility for the Federal portion of the supplemental security income payment, except as provided in sec. 1616(c) of the Act (see Subpart T of this part). There is a limitation on the amount payable to the Secretary by a State for the amount of the supplementary payments made on its behalf for any fiscal year pursuant to the State's agreement with the Commissioner. Such limitation on the amount of reimbursement is related to the State's payment levels for January 1972 and its total expenditures for calendar year 1972 for aid and assistance under the appropriate State plan(s)(see Subpart T of this part).

(2) States with Medicaid eligibility requirements for the aged, blind, and disabled that are identical (except as permitted by S 416.2111) to the supplemental security income eligibility requirements may elect to have the Social Security Administration determine Medicaid eligibility under the State's program for recipients of supplemental security income and recipients of a federally administered State supplementary payment. The State would pay half of Social Security Administration's incremental administrative costs arising from carrying out the agreement.

§ 416.202 Who may get SSI benefits.

You are eligible for SSI benefits if you meet all of the following requirements:

(a) You are—

(1) Aged 65 or older (Subpart H);

(2) Blind (Subpart I); or

(3) Disabled (Subpart I).

(b) You are a resident of the United States (S 416.1603), and--

(1) A citizen or a national of the United States (S 416.1610);

(2) An alien lawfully admitted for permanent residence in the United States (S 416.1615);

(3) An alien permanently residing in the United States under color of law (S 416.1618); or

(4) A child of armed forces personnel living overseas as described in S 416.216.

(c) You do not have more income than is permitted (Subparts K and D).

(d) You do not have more resources than are permitted (Subpart L).

(e) You are disabled, drug addiction or alcoholism is a contributing factor material to the determination of disability (see S 416.935), and you have not previously received a total of 36 months of Social Security benefit payments when appropriate treatment was available or 36 months of SSI benefits on the basis of disability where drug addiction or alcoholism was a contributing factor material to the determination of disability.

(f) You are not—

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(g) You file an application for SSI benefits (Subpart C).

§ 416.610 When payment will be made to a representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments; or

(3) Eligible for benefits solely on the basis of disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payment to a beneficiary under age 18 if the beneficiary is—

(1) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(2) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(3) Within 7 months of attaining age 18 and is initially filing an application for benefits.

§ 416.621 Order of preference in selecting a representative payee.

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. Our primary concern is to select the payee who will best serve the beneficiary's interests. The preferences are:

(a) For beneficiaries 18 years old or older our preference is--

(1) A legal guardian, spouse (or other relative) who has custody of the beneficiary or who demonstrates strong concern for the personal welfare of the beneficiary;

(2) A friend who has custody of the beneficiary or demonstrates strong concern
for the personal welfare of the beneficiary;

(3) A public or nonprofit agency or institution having custody of the beneficiary;

(4) A private institution operated for profit and licensed under State law, which has custody of the beneficiary; and

(5) Persons other than above who are qualified to carry out the responsibilities of a payee and who are able and willing to serve as a payee for the beneficiary; e.g., members of community groups or organizations who volunteer to serve as payee for a beneficiary.

(b) For beneficiaries under age 18, our preference is—

(1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;

(2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;

(3) A natural or adoptive parent who does not have custody of the beneficiary and is not contribution toward his or her support but is demonstrating strong concern for the beneficiary's well being;

(4) A relative or stepparent who has custody of the beneficiary;

(5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;

(6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and

(7) An authorized social agency or custodial institution.

§ 416.o35 Responsibilities of a representative payee.

A representative payee has a responsibility to—

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;

(b) Notify us of any event that will affect the amount of benefits the beneficiary receives or the right of the beneficiary to receive benefits (See Subpart G of this part concerning these reporting requirements);

(c) Submit to us, upon our request, a written report accounting for the benefits received;

(d) Notify us of any change in his or her circumstances that would affect performance of the payee responsibilities; and

(e) In cases in which the beneficiary is an individual under age 18 (including cases in which the beneficiary is an individual whose low birth weight is a contributing factor material to our determination that the individual is disabled), ensure that the beneficiary is and has been receiving treatment to the extent considered medically necessary and available for the condition that was the basis for providing benefits (See S 416.994a(i).)

§ 416.640 Use of benefit payments.

(a) Current maintenance. We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items.

Example: A Supplemental Security Income beneficiary is entitled to a monthly benefit of $264. The beneficiary's son, who is the representative payee, disburses the benefits in the following manner:

Rent and Utilities	$166
Medical	20
Food	60
Clothing	10
Miscellaneous	8

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) Institution not receiving Medicaid funds on beneficiary's behalf. If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance will include the customary charges for the care and services provided by an institution, expenditures for those items which will aid in the beneficiary's recovery or release from the institution, and nominal expenses for personal needs (e.g., personal hygiene items, snacks, candy) which will improve the beneficiary's condition. Except as provided under S 416.212, there is no restriction in using SSI benefits for a beneficiary's current

maintenance in an institution. Any payments remaining from SSI benefits may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A hospitalized disabled beneficiary is entitled to a monthly benefit of $264. The beneficiary, who resides in a boarding home, has resided there for over 6 years. It is doubtful that the beneficiary will leave the boarding home in the near future. The boarding home charges $215 per month for the beneficiary's room and board.

The beneficiary's representative payee pays the boarding home $215 (assuming an unsuccessful effort was made to negotiate a lower rate during the beneficiary's absence) and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) Institution receiving Medicaid funds on beneficiary's behalf. Except in the case of a beneficiary receiving benefits payable under S 416.212, if a beneficiary resides throughout a month in an institution that receives more than 50 percent of the cost of care on behalf of the beneficiary from Medicaid, any payments due shall be used only for the personal needs of the beneficiary and not for other items of current maintenance.

Example: A disabled beneficiary resides in a hospital. The superintendent of the hospital receives $30 per month as the beneficiary's payee. The benefit payment is disbursed in the

following manner, which would be consistent with our guidelines:

Miscellaneous canteen items $10
Clothing 15
Conserved for future needs of the beneficiary 5

(d) Claims of creditors. A payee may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Example: A disabled beneficiary was determined to be eligible for a monthly benefit payment of $208 effective April 1981. The benefits were certified to the beneficiary's brother who was appointed as the representative payee. The payee conserved $27 of the benefits received. In June 1981 the payee received a bill from a doctor who had treated the beneficiary in February and March 1981. The bill was for $175.

After reviewing the beneficiary's current needs and resources, the payee decided not to use any of the benefits to pay the doctor's bill. (Approximately $180 a month is required for the beneficiary's current monthly living expenses--rent, utilities, food, and insurance--and the beneficiary will need new shoes and a coat within the next few months.)

Based upon the above, the payee's decision not to pay the doctor's bill is consistent with our guidelines.

(e) Dedicated accounts for eligible individuals under age 18.

(1) When past-due benefit payments are required to be paid into a separate dedicated account (see S 416.546), the representative payee is required to establish in a financial institution an account dedicated to the purposes described in paragraph (e)(2) of this section. This dedicated account may be a checking, savings or money market account subject to the titling requirements set forth in S 416.645. Dedicated accounts may not be in the form of certificates of deposit, mutual funds, stocks, bonds or trusts.

(2) A representative payee shall use dedicated account funds, whether deposited on a mandatory or permissive basis (as described in S 416.546), for the benefit of the child and only for the following allowable expenses—

(i) Medical treatment and education or job skills training;

(ii) If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; or

(iii)Other items and services related to the child's impairment(s) that we determine to be appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child.

(3) Representative payees must keep records and receipts of all deposits to and expenditures from dedicated accounts, and must submit these records to us upon our request, as explained in SS 416.635 and 416.665.

(4) The use of funds from a dedicated account in any manner not authorized by this section constitutes a misapplication of benefits. These misapplied benefits are not an overpayment as defined in S 416.537; however, if we determine that a representative payee knowingly misapplied funds in a dedicated account, that representative payee shall be liable to us in an amount equal to the total amount of the misapplied funds.

(5) The restrictions described in this section and the income and resource exclusions described in SS 416.1124(c)(20) and 416.1247 shall continue to apply until all funds in the dedicated account are depleted or eligibility for benefits terminates, whichever comes first. This continuation of the restrictions and exclusions applies in situations where funds remain in the account in any of the following situations—

(i) A child attains age 18, continues to be eligible and receives payments directly;

(ii) A new representative payee is appointed. When funds remaining in a dedicated account are returned to us by the former representative payee, the new representative payee must establish an account in a financial institution into which we will deposit these funds, even if the amount is less than that prescribed in S 416.546; or

(iii)During a period of suspension due to ineligibility as described in S 416.1321, administrative suspension, or a period of eligibility for which no payment is due.

§ 416.645 Conservation and investment of benefit payments.

(a) General. If payments are not needed for the beneficiary's current maintenance or reasonably foreseeable needs, they shall be conserved or invested on behalf of the beneficiary. Conserved funds should be invested in accordance with the rules followed by trustees. Any investment must show clearly that the payee holds the property in trust for the beneficiary.

Example: A State institution for mentally retarded children, which is receiving Medicaid funds, is representative payee for several beneficiaries. The checks the payee receives are deposited into one account which shows that the benefits are held in trust for the beneficiaries. The institution has supporting records which show the share each individual has in the account. Funds from this account are disbursed fairly quickly after receipt for the personal needs of the beneficiaries. However, not all those funds were disbursed for this purpose. As a result, several of the beneficiaries have significant accumulated resources in this account. For those beneficiaries whose benefits have accumulated over $150, the funds should be deposited in an interest-bearing account or invested relatively free of risk on behalf of the beneficiaries.

(b) Preferred investments. Preferred investments for excess funds are U.S. Savings Bonds and deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law. The account must be in a form which shows clearly that the representative payee has only a fiduciary and not a personal interest in the funds. If the

payee is the legally appointed guardian or fiduciary of the beneficiary, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds--------- (Name of beneficiary) --- (Social Security Number), for whom ------- (Name of payee) is representative payee for Supplemental Security Income benefits;

(2) For interest or dividend paying accounts--..... (Name of beneficiary) by ..... (Name of payee), representative payee.

(c) Interest and dividend payments. The interest and dividends which result from an investment are the property of the beneficiary and may not be considered to be the property of the payee.

§ 416.1205 Limitation on resources.

(a) Individual with no eligible spouse. An aged, blind, or disabled individual with no spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources do not exceed $1,500 prior to January 1, 1985, and all other eligibility requirements are met. An individual who is living with an ineligible spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources, including the resources of the spouse, do not exceed $2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(b) Individual with an eligible spouse. An aged, blind, or disabled individual who has an eligible spouse is eligible for benefits under title XVI of the Act if their nonexcludable resources do not exceed $2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(c) Effective January 1, 1985 and later. The resources limits and effective dates for January 1, 1985 and later are as follows:

Effective date	Individual	Individual and spouse
Jan. 1, 1985	$1,600	$2,400
Jan. 1, 1986	1,700	$2,550
Jan. 1, 1987	1,800	$2,700
Jan. 1, 1988	1,900	$2,850
Jan. 1, 1989	2,000	$3,000

Wash. Rev. Code § 13.34.030. Definitions.

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(5) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(6) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(7) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(8) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(9) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(10)"Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(11)"Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(12)"Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

(13)"Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(14)"Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in- home treatment programs that have been considered and rejected; the preventive services that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

Wash. Rev. Code § 13.34.130. Order of disposition for a dependent child, alternatives--Petition seeking termination of parent-child relationship--Placement with relatives

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or

that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (i) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (ii) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(4) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

Wash. Rev. Code § 74.13.060. Secretary as custodian of funds of person placed with department--Authority--Limitations--Termination

The secretary or his designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom.

Wash. Rev. Code § 74.20A.010. Purpose--Remedies additional

Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs.

Wash. Admin. Code § 388-25-0210. How does the department treat resources and unearned income of a child in foster care?

(1) Unearned income includes Supplemental Security Income (SSI), Retirement, Survivors and Disability Insurance (RSDI), veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income. The department must use income not exempted to cover the child's cost of care, except for resources held in trust for an American Indian child.

(2) Any person, agency or court that receives payments on behalf of a child in out-of-home care must send the payments to the department's division of child support.

Wash. Admin. Code § 388-70-069
(repealed and replaced by Wash. Admin. Code § 388-25-0210)

(1) If a child in foster care is entitled to financial benefits the income received shall be used on behalf of the child to help pay for the cost of the foster care received, except for resources held in trust for an American Indian child according to provisions in WAC 388-28-650.

(a) Income includes SSI [Supplemental Security Income], RSDI [retirement survivors disability insurance], veteran's benefits, railroad retirement benefits, inheritances, or any other payments for which the child is eligible, unless specifically exempted by the terms and conditions of the receipt of the income.

(b) Receipt of other income as described above shall not relieve the child's responsible parent(s) of the liability for payment of child support in accordance with WAC 388-70-075 through 388-70-084.

(2) Any person, agency, or court which receives any payments on behalf of a child in foster care shall remit such payments to the office of support enforcement, in accordance with WAC 388-70-082.

(3) Resources in the control of a child in foster care shall be treated in accordance with WAC 388-28-400 through 388-28-455.